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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR., PETITIONER,

vs.

TEXAS.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1964
CERTIORARI GRANTED JUNE 22, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR., PETITIONER,

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ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

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[fol. A] Caption (omitted in printing).

IN THE 57th JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

IN RE:

JOHN WILLIAM STANFORD, JR., also known as John Stanford, Jr.

[fol. B]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. 158,480

The State of Texas
County of Bexar

APPLICATION TO DETERMINE LEGALITY OF SEARCH WARRANT—Filed January 9, 1964

To the Honorable Judge of Said Court:

Comes now Petitioner, John William Stanford, Jr., also known as John Stanford, Jr., and moves the Honorable Solomon Casseb, District Judge, who acted as Magistrate in the above styled and numbered matter, to quash, set aside, and hold for naught, the search warrant previously issued by this Court on December 27, 1963, in the above styled and numbered matter and to return to John Stanford, Jr., all books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and all other items then and there seized on the following alternative grounds, each ground being depended on by itself alone by John Stanford, Jr., in the alternative and in the disjunctive, to wit:

1. Because the affidavit signed by V. Murray Jordan and Lonny F. Zweiner, under which the search warrant at question was issued, did not contain the essential showing required by Article 6889-3A, Revised Civil Statutes of

Texas, that the premises to which the warrant related was a place either where some specified phase or phases of this [fol. C] Article or Article 6889-3, Revised Civil Statutes of Texas, were violated or being violated at the time, or where were kept books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments showing a violation of some phase or phases of these Articles, but rather said affidavit merely states that books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments concerning the Communist Party of Texas were on the premises at question; or,

2. Because the affidavit signed by V. Murray Jordan and Lonny F. Zweiner, under which the search warrant was issued, did not conform to Article 6889-3A making the procedure for issuing search warrants contained in Title 6 of the Code of Criminal Procedure of Texas applicable to a search warrant issued under that Article, except as provided therein, because Articles 309, 310, and similar articles of that Code require that property authorized to be seized be accurately described as related to the commission of a crime, and this was not done by merely stating in the affidavit that there were books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments concerning the Communist Party of Texas on the premises at question; or,

3. Because neither the application for the search warrant nor the affidavit in support thereof either made a showing of probable cause for the issuance of the warrant [fol. D] or sufficiently describe the things to be seized under it, and, therefore, was in violation of John Stanford, Jr.'s right to be free of an unreasonable search and seizure as guaranteed not only by Section 9 of Article 1, the Bill of Rights of the Constitution of the State of Texas, but also by the similar provisions of the Fourth Amendment and Due Process of Law clause of the Fourteenth Amendment of the Constitution of the United States of America; or,

4. Because the search and seizure at question was in violation of Section 10 of Article 1, the Bill of Rights of

the Constitution of the State of Texas, and of the Fifth and Fourteenth Amendments to the Constitution of the United States of America in that private papers, record, letters, and books of John Stanford, Jr. were obtained on a compulsory basis by the Criminal District Attorney of Bexar County, Texas, thereby forcing John Stanford, Jr. to testify against himself because under the search warrant issued a seizure was made of the private letters, papers, records, and books of John Stanford, Jr., by the Criminal District Attorney of Bexar County, Texas, thereby compelling John Stanford, Jr. to give evidence against himself in a criminal case; or,

5. Because the Criminal District Attorney of Bexar County, Texas, as well as his predecessors, has believed and been of the opinion for months, if not years, that John [fol. E] Stanford, Jr., has allegedly possessed books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments purportedly concerning the Communist Party of Texas and thus the search warrant was issued without probable cause or without the brevity of time constituting probable cause; or,

6. Because the issuance of said search warrant violated the rule of privileged communications between attorney and client in that John Stanford, Jr. has previously corresponded with a Houston, Texas, attorney at law, Ben G. Levy, Esquire, regarding Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas, and said privileged communications, that is, letters to and from said attorney were seized under the aforesaid search warrant in violation of the privileged communication rule aforesaid; or,

7. Because the government of the United States of America has preempted the field of alleged seditious and subversive activities so as to have a uniform national standard of what is and what is not seditious and subversive rather than fifty different standards in fifty different states, and that thereby this Honorable Court was without jurisdiction to grant the search warrant under which the home of John Stanford, Jr. was searched and items of his personal property therein seized; or,

[fol. F] 8. Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Sections 8 and 27 of the Texas Constitution, and the First and Fourteenth Amendments to the United States Constitution, all of which forbid the infringement of the freedoms of speech, press, assembly and petition; or,

9. Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 9 of the Texas Constitution, and the Fourth and Fourteenth Amendments to the United States Constitution, all of which forbid unreasonable searches and seizures, and the issuance of search warrants except on probable cause, and require that the things to be seized be particularly described; or,

10. Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 10 of the Texas Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, [fol. G] all of which guarantee the right not to be compelled to give evidence against oneself; or,

11. Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 10 of the Texas Constitution, and the Sixth and Fourteenth Amendments to the United States Constitution, all of which guarantee that an accused shall be informed of the nature and cause of the accusation, shall have the right to confront the witnesses against him, shall have the right to compulsory process, and the right to assistance of counsel for his defense; or,

12. Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 19, of the Texas Constitution, and the Fourteenth Amendment to the United States Constitution, in that the statute is so vague and uncertain that it denies John Stanford, Jr. of his liberty and property without due process of law.

John Stanford, Jr.

[fol. II] American Civil Liberties Union, 156 Fifth Avenue, New York 10, New York, By: Maury Maverick, Jr., Attorney at Law and Local Counsel for American Civil Liberties Union.

[File endorsement omitted]

[fol. I]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

The State of Texas
County of Bexar

ORDER TO HAVE HEARING REGARDING SEARCH WARRANT—
Rendered: January 9th, 1964

This 9th day of January, 1964, came on to be heard the application of John William Stanford, Jr., also known as John Stanford, Jr., to quash, set aside, and hold for naught the search warrant previously issued by the Honorable Solomon Casseb, as Magistrate, on December 27, 1963, in the above styled and numbered matter, and to return to the said John William Stanford, Jr. all books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and all other items then and there seized, and the Court being of the opinion that there should be a

hearing regarding the issuance of said search warrant, it is hereby ordered that a hearing regarding the issuance of the aforesaid search warrant and the relief applied for by John Stanford, Jr., shall be had in the 57th Judicial District Court of Bexar County, Texas, at 9:00 o'clock AM, on the 17th day of January, 1964.

Solomon Casseb, District Judge.

[fol. J]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE:

JOHN WILLIAM STANFORD, JR.

SEARCH WARRANT

ANSWER TO APPLICATION TO DETERMINE LEGALITY OF SEARCH WARRANT—Filed January 17, 1964

To the Honorable Judge of Said Court:

Now comes the State of Texas by and through the Criminal District Attorney of Bexar County and files this Answer to the Application to Determine the Legality of the Search Warrant filed herein by the State of Texas, and for such answer would show the Court:

I.

That the Motion to Quash the Search Warrant and set it aside is a preliminary matter to a trial on the merits of the issues that may be involved in this case and will not lie since the proper method of attack on the validity of a search is objection at the time the items are offered in evidence at the trial.

II.

That the magistrate issuing the search warrant is not by the nature of the office the proper forum for the determination of issues of Constitutional law involving illegal searches and seizures. That this court sitting as a magistrate is not authorized to determine such issues.

III.

That the sole issue for determination by the issuing magistrate is whether or not there was good grounds for the issuance of the warrant and the sole test in this hearing is the satisfaction of the magistrate in accordance with Article 329, C.C.P. That this issue must be determined by the affidavits, warrant and the nature of the property seized.

[fol. K]

IV.

The State denies that the affidavits supporting the warrant are invalid for any reason stated by Petitioner. The State denies that the application for the search warrant is invalid for any reason stated by Petitioner. The State denies that the search warrant is invalid for any reason stated by Petitioner. The State denies that the inventory of property seized is invalid for any reason stated by Petitioner.

V.

That the State of Texas denies that it knowingly seized any communication between petitioner and his attorney which would violate the attorney-client privilege.

VI.

That the State of Texas denies that the Congress of the United States has pre-empted the field of investigation of subversive and seditious activities when such activities involve the overthrow of the State of Texas.

VII.

The State also denies that the search here involved violates any provision of the Texas or United States Constitutions.

VIII.

The State herewith tenders to the Court for return to the Petitioner certain papers and files, a list of which will be supplied the Court, of a personal nature seized by inadvertence with other files of the Petitioner.

Respectfully submitted,

James E. Barlow, Criminal District Attorney.

[fol. L] [File endorsement omitted]

[fol. M]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE:

JOHN WILLIAM STANFORD, JR.

SEARCH WARRANT

JUDGMENT—January 20, 1964

On the 17th day of January, 1964, came on to be heard the Application of the Petitioner, John W. Stanford, Jr., to Determine the Legality of the Search Warrant issued in this cause, and the Petitioner appeared in person and by and through an Attorney representing the American Civil Liberties Union and the State appeared by and through the Criminal District Attorney of Bexar County, Texas, and the representatives of the Attorney General of Texas, and the Court having considered the pleadings and the evidence in the cause, and this Court sitting as a magis

trate, as it has jurisdiction to do so under Title 6 of the Code of Criminal Procedure of Texas.

Denies the relief prayed for by the Petitioner herein. Costs are taxed to Petitioner.

Signed this the 20 day of January, 1964.

Solomon Casseb, District Judge, 57th Judicial District of Bexar County, Texas.

James E. Barlow, Criminal District Attorney, Bexar County, Texas.

Approved as to form only:

Maury Maverick, Jr., Attorney for American Civil Liberties Union.

[fol. N] [File endorsement omitted]

[fol. O]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE:

JOHN WILLIAM STANFORD, JR.

SEARCH WARRANT

STIPULATION—Filed January 20, 1964

It is stipulated by and between the Petitioner, John William Stanford, Jr., acting by and through his attorney, Maury Maverick, Jr., of the American Civil Liberties Union, and the State of Texas, acting by and through the Criminal District Attorney of Bexar County, Texas, that the ruling of the Magistrate in this cause is not appealable to any Appellate Court in the State of Texas, and that such ruling is a final ruling under the State law of Texas.

James E. Barlow, Criminal District Attorney, Bexar County, Texas.

Maury Maverick, Jr., Attorney, American Civil Liberties Union.

Approved:

Solomon Casseb, District Judge, 57th Judicial District of Bexar County, Texas.
Magistrate

[fol. P] [File endorsement omitted]

[fol. Q]

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE:

JOHN WILLIAM STANFORD, JR.

SEARCH WARRANT

MOTION FOR NEW TRIAL—Filed January 29, 1964

To the Honorable Judge of Said Court:

Now Comes John William Stanford, Jr., Applicant in the above entitled and numbered cause and moves the Court to set aside its judgment rendered herein on the 20th day of January, 1964 and grant him a new trial for the following reasons:

First: Because the judgment of the Court is contrary to the law.

Second: Because the judgment of the Court is contrary to the evidence.

Third: Because the affidavit signed by V. Murray Jordan and Lonny F. Zweiner, under which the search warrant at question was issued, did not contain the essential showing required by Article 6889-3A, Revised Civil Statutes of Texas, that the premises to which the warrant related was a place either where some specified phase or phases of this Article or Article 6889-3, Revised Civil Statutes of Texas, were violated or being violated at the time, or where were kept books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments showing a violation of some phase or phases of these Articles, but rather said affidavit merely states that books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments concerning the Communist Party of Texas were on the premises at question.

Fourth: Because the affidavit signed by V. Murray Jordan and Lonny F. Zweiner, under which the search warrant was issued, did not conform to Article 6889-3A making the procedure for issuing search warrants contained in Title 6 of the Code of Criminal Procedure of Texas applicable to a search warrant issued under that Article, except as provided therein, because Articles 309, 310, and similar articles of that Code require that property authorized to be seized as accurately described as related, [fol. R] to the commission of a crime, and this was not done by merely stating in the affidavit that there were books, records, pamphlets, receipts, cards, lists, memoranda, pictures, recordings, or written instruments concerning the Communist Party of Texas on the premises at question.

Fifth: Because neither the application for the search warrant nor the affidavit in support thereof either made a showing of probable cause for the issuance of the warrant or sufficiently describes the things to be seized under it, and therefore was in violation of John William Stanford, Jr.'s right to be free of an unreasonable search and seizure as guaranteed not only by Section 9 of Article 1, the Bill of Rights of the Constitution of the State of Texas, but also by the similar provisions in the Fourth Amendment

and Due Process of Law clause of the Fourteenth Amendment of the Constitution of the United States of America.

Sixth: Because the search and seizure at question was in violation of Section 10 of Article 1, the Bill of Rights of the Constitution of the State of Texas, and of the Fifth and Fourteenth Amendments of the Constitution of the United States of America in that private papers, records, letters, and books of John Stanford, Jr. were obtained on a compulsory basis by the Criminal District Attorney of Bexar County, Texas, thereby forcing John Stanford, Jr. to testify against himself because under the search warrant issued a seizure was made of the private letters, papers, records, and books of John William Stanford, Jr. by the Criminal District Attorney of Bexar County, Texas, thereby compelling John William Stanford, Jr. to give evidence against himself in a criminal case.

Seventh: Because the Criminal District Attorney of Bexar County, Texas, as well as his predecessors, has believed and been of the opinion for months, if not years, that John William Stanford, Jr. has allegedly possessed books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments purportedly concerning the Communist Party of Texas and thus the search warrant was issued without probable cause or without the brevity of time constituting probable cause.

[fol. 8] *Eighth*: Because the issuance of said search warrant violated the rule of privileged communications between attorney and client in that John William Stanford, Jr. has previously corresponded with a Houston, Texas attorney at law, Ben G. Levy, Esquire, regarding Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas, and said privileged communications, that is, letters to and from said attorney, were seized under the aforesaid search warrant in violation of the privileged communications rule aforesaid.

Ninth: Because the government of the United States of America has preempted the field of alleged seditious and subversive activities so as to have a uniform national

standard of what is and what is not seditious and subversive rather than fifty different standards in fifty different states, and that thereby this Honorable Court was without jurisdiction to grant the search warrant under which the home of John William Stanford, Jr. was searched and items of his personal property therein seized.

Tenth: Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Sections 8 and 27 of the Texas Constitution, and the First and Fourteenth Amendments of the United States Constitution, all of which forbid the infringement of the freedoms of speech, press, assembly and petition.

Eleventh: Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 9 of the Texas Constitution, and the Fourth and Fourteenth Amendments of the United States Constitution, all of which forbid unreasonable searches and seizures, and the issuance of search warrants except on probable cause, and require that the things to be seized be particularly described.

Twelfth: Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, [fol. T] violate Article 1, Section 10 of the Texas Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution, all of which guarantee the right not to be compelled to give evidence against oneself.

Thirteenth: Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 10 of the Texas Constitution, and

the Sixth and Fourteenth Amendments to the United States Constitution, all of which guarantee that an accused shall be informed of the nature and cause of the accusation, shall have the right to confront the witnesses against him, shall have the right to compulsory process, and the right to assistance of counsel for his defense.

Fourteenth: Because Articles 6889-3 and 6889-3A of the Revised Civil Statutes of Texas, on their face or as construed and applied in this case, and the search warrant issued under the purported authority of said statutes, violate Article 1, Section 19 of the Texas Constitution, and the Fourteenth Amendment to the United States Constitution, in that the statute is so vague and uncertain that it denies John William Stanford, Jr. of his liberty and property without due process of law.

Wherefore, Your Applicant prays the Court that its judgment as aforesaid be set aside and that he be granted a new trial herein.

Maury Maverick, Jr. as attorney for American Civil Liberties Union on behalf of John William Stanford, Jr.

[File endorsement omitted]

[fol. U]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

No. F-158,480

IN RE:

JOHN WILLIAM STANFORD, JR.

SEARCH WARRANT

ORDER OVERRULING MOTION FOR NEW TRIAL—
January 29, 1964

On this 29th day of January, 1964, at a regular term of this Court, came on to be heard in this cause the application of John William Stanford, Jr. to set aside the judgment of the Court rendered against him on the 20th day of January, 1964 in the above entitled and numbered cause, and said Motion having been duly heard and considered, the Court is of the opinion that the same should be overruled.

It is therefore Considered and Ordered by the Court that the Motion for new trial herein be, and the same is hereby in all things overruled, to which said judgment and the ruling of the Court, Applicant then and there excepted and in open Court gave notice of appeal to the Supreme Court of the United States of America.

Signed this 29 day of January, 1964.

Solomon Casseb, Jr., Judge Presiding.

Approved as to Form:

Maury Maverick, Jr., James E. Barlow.

[fol. W] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. X]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

No. F-158,480

In Re:

JOHN WILLIAM STANFORD, JR.

Be it remembered, that theretofore, on the 17th day of January, A. D., 1964, came on for a hearing, the above entitled and numbered cause, before Honorable Solomon Casseb, Jr., Judge of said Court, whereupon the following testimony was had and evidence adduced:

Statement of Facts—January 17, 1964

APPEARANCES:

For the applicant: Mr. Maury Maverick, Jr., Attorney at Law, Maverick Building, San Antonio, Texas.

For the State of Texas: Mr. James Barlow, District Attorney, Bexar County Courthouse, San Antonio, Texas; Mr. Lonny Zwiener and Mr. Murray Jordon, Assistant Attorney Generals for the State of Texas.

[fol. 1] MR. JESSE DOBBS, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?
A. Jesse Dobbs.
Q. Where are you employed?
A. I'm a United States Marshal for the Western District of Texas.
Q. Which includes San Antonio?
A. Yes, sir.
Q. And, Bexar County?

A. Yes, sir.

Q. Now, was a subpoena duces tecum served upon you?

A. Yes, sir.

Q. To bring certain papers with you?

A. Yes, sir.

Q. Did you bring those papers with you?

A. I brought what I had, yes, sir.

Q. Have you ever seen John William Stanford, Jr. before?

A. Yes, sir, I have.

Q. Did you see him on December 26, 1963?

A. Yes.

[fol. 2] Q. What happened that day, when you saw him?

A. At that time, I served him with a process.

Q. What was that process?

A. Well, it was an Order—a Report and Order, issued by the Subversive Activities Control Board.

Q. Of the United States Government?

A. Yes, sir.

Q. For him to do what?

A. For him to register.

Q. Under the Laws of the United States of America?

A. Yes, sir.

Q. Please mark this for identification.— Mr. Dobbs, I hand you applicant's Exhibit Number .... marked one for identification, and ask you to please tell me what that is?

A. Without looking all the way through it, this appears to be the Order that I served on Mr. Stanford, which is the Report and Order of the Subversive Activities Control Board.

Q. Now, will you—what—what is the stamping in the upper right hand corner of that?

A. The stamp, "Received, United States Marshal, December 26, 1963, Western District of Texas, San Antonio, Texas."

Q. Alright—

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. Barlow: Alright, are you offering it into evidence?

Mr. Maverick: Yes, sir.

[fol. 3] Mr. Barlow: I'm going to object to it as being immaterial and irrelevant to any issues in this cause. This

hearing is on the validity of a search warrant, and the search and seizure made in the house of John Stanford, and number two, it is not material to this, what the United States—what action has been taken by the Attorney General of the United States or the Subversive Activities Control Board of the United States, or any other Order of the United States Government, to the issues which is—which is—which are on trial here, which is a Magistrate's Hearing to determine the validity of the search.

The Court: The affidavit for the search warrant was made under the provisions of the State Statutes, is that correct?

Mr. Barlow: Yes, sir, that's right. The affidavit for the search warrant is made under the provisions of the State Statutes, and the application is made under the State Statutes, and I think it's immaterial and irrelevant.

[fol. 4] The Court: What's the materiality of this, counsel?

Mr. Maverick: Your Honor, I can cite opinion after opinion to you by the Supreme Court of the United States and particularly the case of Pennsylvania v. Nelson, 350 U.S. 497, opinion by Chief Justice Warren, where the State of Pennsylvania, declared it unconstitutional, and they said where the Federal Government has acted as it has here in this Stanford case, that the field of prohibited activities—

The Court: I'll withhold my ruling on that until I hear it all. Let's proceed, and I'll hear your legal arguments on it later.

Mr. Maverick: One moment, please—

The Court: Alright.

By Mr. Maverick:

Q. Mr. Dobbs—I'll ask you, Mr. Dobbs, if this Report, which you served on John William Stanford, Jr., Applicant in this case, is entitled, "Report and Order of the Board of Subversive Activities Control Board, Docket Number 1-21-63, Robert F. Kennedy, Attorney General of the United States, Petitioner v. John William Stanford, Jr., Respondent," dated, December 20, 1963?

A. That's right.

[fol. 5] Q. Would you please show me what papers you brought with you showing you had service of citation, or service of process upon Stanford?

Mr. Barlow: I want to object to all of this. My objection goes to all this line of questioning on the same grounds.

Mr. Maverick: I haven't made my Motion to Move it in, yet.

Mr. Barlow: That's alright—as to the questions about the Order, I want to reserve my objections to it on the same grounds.

Mr. Maverick: Your Honor, I ask the help of the Court in this regard. Now the Federal authorities, I imagine, will want these originals back, and I would like to have them marked and moved into evidence later on, and we can have copies made of them or do you want these returned to your office, now?

By witness:

A. If it please the Court, I have thermofax copies made of this.

The Court: Okay, have the originals so marked, and the Court will permit you to substitute these thermofax copies for the originals, and the originals can be returned.

[fol. 6] Q. I hand you Applicant's Exhibit Number 2, and ask you what that is?

A. This is—is a letter, a cover letter that I received with the Report and Order that was served on Mr. Stanford, sent by Frank R. Hunter, Jr., General Counsel for the Subversive Activities Control Board.

Q. I hand it to Mr. Barlow, and now, move it into evidence.

Mr. Barlow: I would like to look at all of these.

Mr. Maverick: Well—

Mr. Barlow: If you are going to move them all in—

Mr. Maverick: I'm going to move them all in, but I want him to identify them. He is going to Austin. He has to leave for a Court appearance for Judge Spears, I think, in Austin, and he has to be there at 11:00 o'clock, so I can't—I've got to talk to him about it, now. I haven't offered

these exhibits, Mr. Barlow, with the others, although I am happy to have you look at them in advance.

Mr. Barlow: Are you moving them into evidence?

Mr. Maverick: I'm going to, if you will let me.

The Court: Gentlemen, I would appreciate both of you addressing your remarks to the Court, rather than each [fol. 7] other.

Mr. Barlow: I'm sorry.

The Court: If you want to try this with each other, then, I will go on to something else. Alright. Make your objection.

Mr. Barlow: At this time, he is offering into evidence this, and I want to object to it on the same grounds.

The Court: I'll make the same ruling. Let's proceed.

By Mr. Maverick:

Q. I hand you Applicant's Exhibit Number Three for identification, and ask you what that is?

A. This is a copy of the return executed by me, showing that he had received this Order and it was served at the time and date it was served.

By Mr. Maverick:

Q. I would likewise, move into evidence, Applicant's Exhibit Number Three.

Mr. Barlow: I'm going to object on the same grounds, for the same reasons.

The Court: Same ruling.

By Mr. Maverick:

Q. I hand you Applicant's Exhibit Number 4, and ask you what that is, please?

A. That is a bill from my office to Mr. Robert R. Thur- [fol. 8] ber, Executive Secretary for the Subversive Activities Control Board in Washington, D. C. for the service of this process.

Q. I hand you—I hand Applicant's Exhibit Number Four to Mr. Barlow, and move it into evidence.

Mr. Barlow: I will object on the—for the same reasons previously stated as Applicant's Exhibit Number one, and on the additional reason, I don't see how it can be any of any relevancy or materiality as to this, in regards to the United States Marshal to the Subversive Activities Control Board for service in relation to the issues on this search warrant.

Mr. Maverick: Your Honor, The Supreme Court of the United States has repeatedly said that when the Federal Government has acted then there is a pre-emption to show that there has been affirmative action by the Government of the United States of America.

The Court: I'll make the same ruling.

Q. I hand you applicant's Exhibit Number 5, and tell me, what that is?

[fol. 9] A. That is simply a record of the law offices of the civil case records in this instance of the receiving and serving and returning, their billing of the process we have been discussing.

Q. I now hand applicant's exhibit number five to Mr. Barlow and move it into evidence.

Mr. Barlow: I object on the same grounds.

The Court: The same ruling.

Q. I have no further questions of this witness. Oh, just one more question. Mr. Dobbs, are you going to Austin?

A. Yes, sir.

Q. Now, you want to go to Austin, and you won't be available further, today, is that correct?

A. Well, if the Court needs me, I will—I can always come.

Mr. Maverick: Pass the witness.

Mr. Barlow: No questions. Thank you.

[fol. 10] MR. JOHN GOODE, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?

A. John Goode.

Q. You are an attorney, Mr. Goode?

A. Yes, sir.

Q. I believe you were the former Chairman of the Republican Party here, is that right?

A. Yes.

Q. Have you ever been an Assistant Criminal District Attorney in Bexar County?

A. Yes, during—from the period 1948 to 1950.

Q. Did you work for Bill Hensley and Harvey Hardy?

A. That's right.

Q. They were the Criminal District Attorneys during those times?

A. One was acting Criminal District Attorney, Harvey Hardy was.

Q. I'll ask you if you, at one time during that period, if you were top administrative assistant, or what title did you have?

A. Acting First Assistant Criminal District Attorney.

Q. I'll ask you if, during the time that you worked for [fol. 11] the office of Criminal District Attorney of Bexar County, you had occasion to see John William Stanford, Jr., the man sitting by me?

A. Yes, I did.

Q. Please describe that to the Court.

Mr. Barlow: Now, wait just a minute. I would like to take him on voir dire to fix the time and place this discussion, when it took place.

Q. Alright, when—when—when did you see him, what place did you see him, and where did you see him in your capacity as Assistant Criminal District Attorney of Bexar County, Texas?

A. Yes, as near as I can recall it was either in the latter part of the year 1949 or the early part of 1950, and our office had been requested by Governor Allen Shivers to cooperate with his Security Division and an investigation they were making of Mr. Stanford.

Q. Did Mr. Stanford come to your office?

A. Yes, I believe, as near as I can recall. Our only participation was to try—arrange, or try to arrange an interview with Mr. Stanford, and the Security Division of Governor Shivers office was in charge of the investigation. We might have done some other investigation, but I have no recollection of it.

Q. Were you present during this interrogation?

[fol. 12] A. Yes, I don't believe it was an interrogation. I—we arranged for him to come into the office for an interview, and then, as I recall, the Security Division man handled then the interview.

Q. Then, he came in? Mr. Stanford came in?

A. Yes, sir.

Q. At the—the approximate year you say?

A. Yes.

Q. Was he asked at that time about whether or not he was a Communist?

Mr. Barlow: Well, now—I'll withdraw that question.

By witness:

A. I just don't have any—any clear independent recollection of it. I know that was the basic purpose of the investigation, and I feel sure he did, but I don't recall the questioning on it. We were cooperating by mainly the use of our office.

Mr. Maverick: Pass the witness.

Cross examination.

Questions by Mr. Barlow:

Q. You say this was sometime in the early part of 1950?

A. Or in '49. I went in the office in '48 and left in '51.

Q. Did you have—have you had an opportunity to examine the act known as the Texas Communist Control Law?

A. I have read it.

[fol. 13] Q. It was passed in 1951 by the Fifty-Second Legislature. Was that law in effect at the time you talked to this man?

A. I don't believe it was 1951. I—I—I left the office during the year 1951. I think this probably was 1950.

Q. Alright, the Article 6889-3A, which is the article that defines Supression of Communist Party and related organizations, was passed by the Fifty-third Legislature in 1954. Would it have been in effect at this conversation—at the time this conversation took place?

A. No. It couldn't have been later than 1951. I think it was earlier in 1951.

Q. Now, so I will understand your testimony, are you testifying that Stanford was suspected of communistic activities at this period of time? Is that what you are testifying to, by either Allen Sivers or somebody else in the State Government?

Q. By Governor Shiver's office. That was—

Q. Alright—

A. The purpose.

Q. You interviewed him at that time?

A. They interviewed him.

Q. They interviewed him.

A. I think there's a file in your office on that. At least, [fol. 14] there was at one time, a small file. It wasn't an extensive investigation.

Q. Now then—this—you were present when this interview took place in 1950 or 1951?

A. Yes, sir.

Q. Was there any action taken at that time?

A. No, I don't believe there was.

Q. You don't know whether there was even a law in effect that you could have taken action under at that time?

A. Well, as I say, I don't have any independent recollection. I know that we were—permitted the Security Division to use our office, and we did arrange the interview.

Mr. Maverick: Your Honor, I'm going to object to him asking about that, because the effective dates of those laws are available to—

The Court: He's already answered. Do you have any further questions of this witness?

Mr. Barlow: No, that's all.

Redirect examination.

Questions by Mr. Maverick:

Q. One question. I would like to ask you one question about these dates. Mr. Barlow asked about Article 6889-A. [fol. 15] If he will turn back four pages in that book there was 6889 known as the Texas Communist Control law which was an earlier date. You don't know when that was passed, either?

A. No, I don't.

[fol. 16] Mr. E. L. Richie, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?

A. E. L. Richie.

Q. Where are you employed?

A. Bexar County Courthouse, County Clerk's office.

Q. Were you in charge of the Assumed Names Section?

A. Yes, sir.

Q. Custodian of the records?

A. Custodian of the records.

Q. As custodian of the records, do you have any records pertaining to John William Stanford, Jr., or a business known as "All Points of View."

A. Yes, sir.

Q. Do you have that?

A. Yes, I do.

Q. Are the original records in your possession?

A. Yes, sir, yes, sir.

Q. That's your orginal record. Now, I hand you applicant's exhibit number 6, and ask you what that is, please?

A. That's an Assumed Named Certificate, filed in Bexar County, operated by the people of Bexar County.

[fol. 17] Q. Who does it show it was issued to?

A. It was filed under the name of "All Points of View," Post Office Box 324 by John William Stanford, on April 23, 1962, and signed by him and sworn to before the Clerk —the County Clerk's office by a deputy.

Q. It is presently in effect?

A. Yes, it is.

Q. I hand—also ask you, this is your certified copy of the original record?

A. A certified copy of the original, yes, sir.

OFFER IN EVIDENCE

Q. I hand you applicant's—I hand applicant's exhibit number 6 to Mr. Barlow and move it into evidence.

Mr. Barlow: No objection.

The Court: Alright, let's proceed.

Mr. Maverick: I have no further questioning of this witness. Mr. Barlow, do you have any questions of this witness.

Mr. Barlow: No questions.

The Court: Let the record reflect that the witness is taking back with him the original of said exhibit number 6, and that a certified copy is being substituted therein.

Mr. Maverick: Are you ready to proceed?

The Court: Yes, sir. That's what we are here for.

[fol. 18] MR. BEN SIEGAL, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?
A. Ben Siegal.
Q. How do you spell that?
A. S-I-E-G-A-L.
Q. Where do you work?
A. I work for the San Antonio Light.
Q. You are a newspaper reporter?
A. Yes, sir, that's right.
Q. In your capacity as a newspaper reporter, have you ever been in the home of John William Stanford, Jr., the Applicant in this cause?
A. Yes, sir, I have.
Q. Was that on December 27, 1963?
A. Yes, sir, it was.
Q. Please describe what took place?
A. Well, I got there about 5:15 or 5:20.
Q. What did you see when you got there?
A. Well, I saw a car from the Sheriff's Department parked outside, and two deputies—well, one deputy and a Sheriff's Investigator, and I asked them what was happening, and they said they are checking books inside, and [fol. 19] various papers, so I went inside the home, and Mrs. Stanford allowed me to come in.
Q. Mrs. Stanford was there?
A. Mrs. Stanford was there.
Q. Alright.
A. And, I went to the back portion of the house, which there were a number of deputies and representatives from the State Attorney General's office.
Q. Who was from the State Attorney General's office?
A. The two gentlemen sitting behind Mr. Barlow.
Q. That would be Mr. Zwiener and Mr. V. Murray Jordon, isn't that correct? Do you know this is Lonny Zwiener and V. Murray Jordon? Do you know their names?

A. No, I know their names, but not which is which.

Q. But, those men were there?

A. Yes.

Q. Was Mr. Wagner Carr there?

A. No, I didn't see him.

Q. Was Mr. Barlow there?

A. No. No, I didn't see him, either.

Q. Was anything being carted out of the place, Mr. Siegal?

A. Various books and well, mostly books, from what I could see, and papers.

Q. Were there any filling—filing cabinet being taken out?

[fol. 20] A. I understand later that there were, but at the time I was there, I do not recall seeing a filing cabinet taken.

Q. How many books—how many cartons of books were taken out?

A. Well, Captain Tony Morin of the Sheriff's Department told me about 8:30, after the search was over, there were fourteen boxes that had been ta' n.

Q. How many cartons of books were left in the house, and not taken out, approximately? You and I talked on the phone about this.

A. No, I told you on the phone I did not know. I estimated probably—it would probably be another fifteen or twenty cartons in the house, if they were cartons.

Q. You estimate there were about fifteen or twenty cartons left in the house, of books that were not taken out, is that correct?

A. No, I said there were two rooms filled with books in the back portion of the house.

Q. Were all of the books taken out of the house?

A. When I left, there were books left in the house.

Q. Were there a goodly more—more books taken out of the house than the number that was left in, when you left the house?

[fol. 21] A. I would say there were probably more left in.

Q. Now, did you hear either Mr. Jordon, or the gentleman sitting over there, or Mr. Zwiener telling the officials

and representatives of Mr. Barlow's which book to take and which book not to take?

A. Well, I can't recall. I do know that representatives of the Sheriff's Office were—and District Attorney's office were marking the names of the books down on a piece of paper. The representatives from the State Attorney Generals' office were walking around picking out books at the time I was there. Now, I'm not sure this was true throughout the evening.

Q. I have here in my hand Applicant's exhibit number 7; a book entitled, Cuba, Castro and Communism. The incredible story of the bearded despot who betrayed a revolution, enslaved a nation, and is rattling Russian arms only 90 miles from our shore. I'll ask you if you saw that book, and if you know why the attorney general of Texas didn't take that book out, too?

A. No, I can't say whether I saw this particular book, or not. I don't remember.

Q. Please mark these—I'll hand you Applicant's exhibit number 9, entitled, "The U. S. Response to Soviet Military Buildup in Cuba, by President Kennedy, Report to the People," and ask you, if you know why the Attorney Gen-[fol. 22] eral of Texas and his representatives didn't take that out?

Mr. Zwiener: Your Honor, that's an improper question. It calls for a conclusion.

The Court: I'll sustain your objection.

Mr. Zwiener: I might say, as far as the materialty of this evidence is concerned, I fail to see in any way, the materiality. The law that governs search warrants of the State of Texas, provide that searches and seizures may be made of any specified category of items. One of those are instrumentalities or implements of crime. Now then, unless the counsel will inform the Court and the State of what he attempts to prove by this witness I object at this time to the materiality of this entire line of questioning.

The Court: I sustained your original objection.

Mr. Maverick: Your Honor, I would like to point out that—

The Court: The Court's already ruled, counsel.

Mr. Maverick: Well, for the purposes of—I intend to abide by the Court's ruling, but for the purposes of per-
[fol. 23] fecting my Bill, may I make a statement?

The Court: Show me any law that entitles you to a bill on a hearing before a Magistrate, then I will provide you with it.

Mr. Maverick: I can't show you any law, but I don't know of any other way to protect my client's interest than the following procedure of perfecting my bill.

The Court: Counsel, I sustained his objection as to the question being improper for this witness, there's no predicate having been laid that this witness knew or did not know exactly what was taken out and what was not taken out. Your question was to this witness, was to hand him an exhibit and ask him, do you know why the Assistant Attorney General did not take this book from the premises, and that's why I sustained his objection. Now, let's proceed from there.

Mr. Maverick: That's all.

Cross examination.

Questions by Mr. Barlow:

Q. Had you ever been out to the Stanford place before?

A. No, that was the first time.

[fol. 24] Q. The first time, and you went out there to interview him in the course of your official duty?

A. That's correct.

Mr. Barlow: I believe that's all.

Mr. Maverick: No further questions.

[fol. 25] MR. TONY MORIN, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

OFFERS IN EVIDENCE

Mr. Maverick: Your Honor, I respectfully move into evidence Applicant's Exhibit Number 11, which is the Affidavit signed by V. Murray Jordon and Lonny Zwiener, upon which the application for search warrant was made. I move also into evidence Applicant's Exhibit Number 12, which is entitled The Application for Search Warrant, which is signed by Mr. James Barlow, the Criminal District Attorney of Bexar County, Texas, and finally at this time we move into evidence Applicant's Exhibit Number 13, which is an Order signed by the Honorable Solomon Casseb, as Magistrate, issuing the Search Warrant in question, in which is attached thereto the inventory made of items taken from the home and premises of John William Stanford, Jr.

Mr. Barlow: No objection.

The Court: Alright, they will be admitted.

[fol. 26] Q. State your name, please?

A. Tony Morin.

Q. Where do you work, Mr. Morin?

A. Bexar County Sheriff's Department.

Q. What is your position, there?

A. Captain, Criminal Division.

Q. I'll ask you if you were in the home of John William Stanford, Jr. on December 27, 1963?

A. Yes, sir, I was.

Q. Please describe what took place there?

A. Mr. Charlie Nail and two Assistant Attorney Generals—

Q. Who is Charlie Nail?

A. Chief Investigator for the District Attorney's office.

Q. Bexar County?

A. Of Bexar County.

Q. Alright.

A. Investigator Bob Woolsey, Investigator L. C. Christianson, after getting a search warrant from Judge Casseb, we proceeded to the residence, and served the search warrant on Mrs. Stanford.

Q. Were you—did you go to Judge Casseb's office to—when you—when they went to him to have him sign the order to issue a search warrant—

A. Yes, sir.

[fol. 27] Q. Did you or anyone present tell Judge Casseb that you could not find any—you could not find any Criminal District Judges of Bexar County, Texas, or Anees Semaan?

A. Mr. Barlow handled that.

Q. Well, you were there. Did you hear any statement made to that effect?

A. They tried to get some of the other judges in the courthouse and couldn't find them.

Q. Was that statement made to Judge Casseb?

A. I don't recall, sir.

Q. You don't know it wasn't made?

A. No, sir.

Q. Alright, what time did you get to the Stanford home?

A. Approximately 2:30 on the evening of December 27, 1963.

Q. Were books and records and letters, and so forth taken out of the Stanford home?

A. Yes, sir.

Q. Did you take photographs, or the office of the Sheriff of Bexar County take photographs?

A. One of the investigators took photographs.

Q. Did you bring those photographs with you?

A. No, sir.

Q. Were you served with a subpoena duces tecum?

A. Yes, sir.

[fol. 28] Q. Will you bring them?

A. I don't have the photographs in my possession, sir.

Q. Well, will you go get them?

A. They are in the possession of the District Attorney's office.

Q. Mr. Barlow tells me Mr. Nail has the photographs, and we will have them available, later on. Who decided, so far as you could ascertain, Mr. Morin, as to what books would be taken out of the Stanford home, and what books would not?

A. The members of the Attorney General's office.

Q. They decided—that decision wasn't made by the members of Mr. Barlow's office?

A. Mr. Charlie Nail, the Chief Investigator was with the men.

Q. He was simply taking down a list of books as he was told, having been taken down by some member of the Attorney General's office?

A. Mr. Nail and L. C.—

Mr. Barlow: I'm going to object to this line of testimony. I think it's immaterial and irrelevant, who decided what was going to be taken. The fact of the matter was, it was taken, and I think it's immaterial and irrelevant.

[fol. 29] The Court: I'll overrule the objection.

Mr. Maverick: Pass the witness.

Cross-examination.

Questions by Mr. Barlow:

Q. Tony, had you ever been out to the Stanford house before?

A. No, sir.

Q. There's been a lot said in the newspaper about the fact that the private library books were taken. Was there a separation between the private library books and all the numbers of books that were seized—actually seized?

A. There were two rooms in which—

Q. Two rooms of books?

A. There were books in both rooms. I didn't personally—didn't go through the books.

Q. Now, most of these books—did you see the books that were seized?

A. I saw some of them.

Q. Were—isn't it a fact that there were numerous copies of—there would be one book with numerous copies of one book, fifteen, twenty, thirty copies of one book?

A. Yes, that was called to my attention out there, by some of the other boys.

Q. Of course there weren't all books, were they? There were a lot of pamphlets, a lot of throw-a-way material, [fol. 30] that type of stuff.

A. That's right.

Q. And, there were numerous copies of that. There were not just—on the ordinary, there wasn't just one copy of a book.

A. There were numerous copies.

Q. There would be sometimes as many as twenty or thirty copies of one book.

A. I believe so.

Q. Who actually made the return, wrote out the inventory return as you went?

A. As they were taking the books?

Q. Yes, sir.

A. Mr. Charlie Nail and L. C. Christianson.

Q. A member of the Sheriff's office actually made that inventory or participated in the making that inventory?

A. That's right.

Q. All of this was done under your direction?

A. Yes, sir.

Mr. Barlow: That's all.

Re-direct examination.

Questions by Mr. Maverick:

Q. Mr. Morin, all these books though, were located in this man's private residence, his home, were they not?

[fol. 31] A. That's true.

Q. I notice, referring now to Applicant's Exhibit Number 13, that you—the authorities took from his home, I believe it's about Page 8, one drawer, metal letter size filing cabinet, containing the file on the Gus Hall-Benjamin J. Davis Defense Committee and other files. Do you remember taking that out?

A. Yes, I'll try to get to that page, Mr. Maverick.

Q. You remember. Let me ask you one more question. Now you say you do remember it. Now, let's turn two

pages from the back, and look at one, two, three, four, five lines up from the bottom, so—one folder of copies of letters. Have you ascertained whether or not, and now, this is my question, Mr. Morin. Have you ascertained whether or not this was private correspondence of John William Stanford, Jr. with his attorney, Ben Levy of Houston, the local counsel of Harris County's American Civil Liberty Union?

A. I didn't go into that folder, sir. I wouldn't know.

Q. On the return, I notice that you—excuse me, Your Honor. I'm—

The Court: Alright.

Q. I'll ask you if also you helped take from that home, John William Stanford's—Jr.'s Honorable Navy Discharge, marriage license, house title paper, and automobile title [fol. 32] papers?

A. I don't recall seeing those, sir.

Q. I'll ask you, on Page 10 from the front, back—

The Court: Counsel, these pages are not numbered on the original, so would you mind showing him what you have reference to?

Mr. Maverick: Yes, sir, I will be delighted.

Q. Let's see—well, just a minute, please. I'm sorry to hold you up here. Look at the item marked number 3 at the bottom of the page, a book called, "The New Leader, Section 2, Theodore Draper," known as an anti-communist. Did you happen to see that book?

A. No, sir, these books were placed in cardboard boxes.

Q. Now, look up at item number 24, which has been scratched through, which says, "Yankee, No, Castro, No, Cuba, Si." Did you see that book?

A. No, sir, I don't recall seeing that.

Q. Alright, turning to what is my page 24, rather 20. Excuse me. I'm going to have to hold it to keep it from—

A. Yeah, I see.

Q. Excuse me, Judge. Down to the third item from the top of the sheet, "Yankee, no, Castro, No, Cuba, Si." Did you see those books?

A. No, sir.

Q. Turn to the third page. Get a little variety in my [fol. 33] questions—here, now, did you see about the middle of the page—did you see the book, "Communist Party of the United States," by Earl Browder?

Mr. Barlow: I want to object to this line of testimony on the grounds that the return speaks for itself on what was seized, and this man was in overall charge of the seizure, but there were several other people involved, and the return was made of each and every item taken out of there, and the return would speak for itself, and it's in evidence. It's immaterial and irrelevant to any issue in this case.

Mr. Maverick: I want to show that this man has a business listed with the County Clerk of Bexar County, entitled "All Points of View," that he did have communist, so-called pro-communist books in his library, and he did have so-called anti-communist books in his library, and as we hope to show later on he advertised in national magazines all over America. Now, the affidavit, itself, don't make sense. The affidavit only says this, that he had books in his home, [fol. 34] concerning—concerning the communist party. That's all it says.

Mr. Barlow: No, it don't, either.

The Court: As far as this witness is concerned, whether he saw them or not, so long as they are on the return. The return is made, sworn to, and filed in this Court, and entered into evidence in this hearing by stipulation.

Mr. Maverick: Alright, no further questions.

Cross-examination.

Questions by Mr. Barlow:

Q. Do you know who Gus Hall is?
A. Sir?
Q. Do you know who Gus Hall is?
A. Gus Hall?
Q. Yes, Gus Hall.
A. No.
Q. Do you know who Benjamin Davis is?
A. No, sir.

Q. Do you know who Eugene Dennis is?
A. No, sir.

Mr. Barlow: That's all.

Re-direct examination.

[fol. 35] Questions by Mr. Maverick:

Q. Do you know who John Starkay is?
A. No, sir.
Q. Do you know who Mr. Browder is?
A. No, sir.

Mr. Maverick: That's all.

[fol. 36] Mr. Charles Nail, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?
A. Charles W. Nail, Jr.
Q. Where do you work?
A. District Attorney's Office, Jim Barlow.
Q. You are a retired F.B.I. agent, aren't you, Mr. Nail?
A. Yes, sir.
Q. Have you ever been in the home of John William Stanford, Jr.?
A. Yes, sir.
Q. When was that?
A. December 27th.
Q. 1963?
A. 1963.
Q. Describe what took place?
A. Well, we went to the door of the house and Tom Morin identified himself to Mrs. Stanford, and read the search warrant to her, and gave her a copy of the search warrant. She let us in the house. She said she would like to have Mr. Stanford there for it, before we started the search.

We agreed, and she tried to call Mr. Stanford and she [fol. 37] couldn't get him on the phone, so I took Mrs. Stanford in my car with Mr. Morin, and we went over on South Flores Street to try to find Mr. Stanford, but we couldn't find him, and so we returned to the house, and we began the search back there. As we went through the kitchen, the south end of the house, there is a little office space, it couldn't have been over more than five or six feet in width and ten feet long. It looked like it might have been a dining room in which, it had shelves with books on them.

Q. Now, Mr. Nail, did you take down the list of books on the inventory which was attached to the return and marked Applicant's Exhibit Number 13?

A. I took part of it. Mr. L. C. Christianson took part, but about half and half.

Q. Approximately from where to where is your handwriting involved there?

A. I believe this first half here looks like L. C Christianson and the last half is mine.

Q. Who—was Mr. Barlow present?

A. No, sir.

Q. Was Mr. Wagner Carr, Attorney General of Texas, present?

A. No.

Q. Who decided what books were to be taken out and [fol. 38] what books were to remain?

A. Well, two Assistant Attorney Generals, Lonny Zwiener and Murray Jordon were the ones who decided what was to be taken.

Q. Did you, yourself, exercise any discretion as to what books would be taken out of this man's house?

A. No, I did not.

Q. Did anyone in the District Attorney's office of Bexar County, Texas, exercise any discretion on what should be taken out of the home of John William Stanford, Jr.?

Mr. Barlow: I'm going to object to that on the grounds it would be immaterial and irrelevant who decided what was going to be taken. I think the return speaks for itself, what was taken.

Mr. Maverick: Your Honor, there is a Supreme Court case of the United States of America—

The Court: I'll overrule your objection.

Q. Alright, Mr. Nail, you may answer.

A. Substantially it was the Assistant Attorney Generals who decided what was taken.

Q. What did you say?

A. I said, substantially, it was the Assistant Attorney Generals.

[fol. 39] Q. Were you served with a subpoena duces tecum?

A. Yes, sir.

Q. I'll ask you if you brought your files, records, books, pamphlets, and so forth here of my American Civil Liberties Union client, Mr. John William Stanford, Jr.?

A. I have them ready to come up here. I've got a volunteer ready to bring them up, a man ready to bring them up whenever you want them.

Q. I want to refer you to Applicant's Exhibit marked 13, that's been moved and accepted into evidence. This page right here, you want to take this with you, sir? One drawer, metal, letter size filing cabinet, containing file on Gus Hall-Benjamin Davis Defense Committee and other files. I want all those files.

A. All this—

Q. In that drawer, all of it. We think it will show his Honorable Navy Discharge, house title papers. Down here, two pages from the back, a folder entitled one folder of copies of letters, which we think pertain to the McCarran Act, and also correspondence between John William Stanford, Jr. and his attorney, or the attorney he was consulting in Harris County, named Ben Levy, who is the local counsel of Harris County, Texas, for the Civil Liberties Union. I'll ask you to please bring those different items into court. [fol. 40] If Your Honor would be kind enough to excuse him to get those and have them brought in?

The Court: Alright, can we proceed on something else?

Q. Oh, let me ask you one more question, please. Mr. Nail, I assume that you saw much of what was taken out.

Let me ask you this. Did you—do you recall any single item taken from the residence of John William Stanford, Jr., the Applicant in this cause, on December 27, 1963 under the search warrant in question, which could be used as physical object to violently overthrow the State of Texas or the United States of America?

Mr. Barlow: I want to object to that, because I think the items speaks for itself. I don't think he is competent and it would invade the province of the Magistrate to determine that issue, himself.

Mr. Maverick: Your Honor, this whole inventory, from top to bottom, there are numerous errors from—it's incorrectly stated. The Supreme Court of the United States has repeatedly said one of the tests to overthrow the United States of America that you have—it would be guns, knives, bombs and what have you, which can result [fol. 41] in the violent overthrow of America.

Mr. Barlow: I beg to disagree.

Mr. Maverick: Well, let me break it down.

Q. Did you see them take any guns out of the residence?

A. I did not.

Q. Did they take any poison out of the residence?

Mr. Zwiener: Your Honor, I believe the return shows what was taken, and the return is in evidence by stipulation.

Mr. Maverick: This return has mistakes in it. Did you take any poisons out of the residence of John William Stanford, Jr.?

The Court: Wait a minute, counsel. The Court would like to rule. Mr. Nail, in your official capacity on this date and on this time and on this occasion in question, acting under the search warrant issued by this Court, did you make part of the inventory, and the matters taken thereon are correct?

A. Yes, sir.

The Court: To the best of your ability, and knowledge you recorded all those things you saw on this inventory before you now?

A. To the best of my knowledge, yes, sir. My portion of the record.

[fol. 42] The Court: Was anything taken, to your knowledge, that was not recorded on this inventory, that you put down?

A. No.

The Court: I'll sustain the objection.

Mr. Maverick: For the purposes of perfecting my Bill, will you permit me to ask this line of questioning?

The Court: He just stated all that was taken was put down on this list.

Mr. Maverick: I respectfully move the Court to permit me to perfect my Bill and to ask this witness such question as, did you remove anything capable of constituting an act of physical violence against the United States of America, and such other questions, as did you remove any bombs, did you remove any airplanes; tanks; did you remove any knives; did you remove any poison gas, did you remove anything like that, capable of physical violence.

Mr. Barlow: It is a crime to advocate the overthrow of the United States and to advocate doesn't require any guns or tanks or planes or bombs, and we renew the objection [fol. 43] on the grounds we have already introduced the inventory of what was taken and it was introduced by agreement, and I think it's immaterial and irrelevant.

Mr. Zwiener: Your Honor, I would like to state further that the laws of the State of Texas makes being a member of the Communist Party a crime; whether or not this is constitutional is probably another question. We do not think it is a matter to be determined at this magistrate hearing. Accordingly I think the objection is good on the grounds it—

The Court: The point is, Mr. Nail, you've testified that nothing was taken other than what is listed on this inventory from the residence at that time?

A. That's right.

The Court: Proceed, counsel.

Mr. Maverick: You—would you give me a ruling on it, Your Honor?

The Court: I just did. I denied it.

Mr. Maverick: Thank you.

The Court: In view of his answer the only things he took out was on his list, and I think he answered your [fol. 44] question.

Mr. Maverick: This return, Your Honor, does not accurately reflect—

The Court: Let's proceed, counsel.

Q. Did you take out his marriage license, Mr. Nail. You got that listed on the inventory?

A. You have got the list.

Q. I'm asking you, Mr. Nail.

A. There was one cabinet 12 by 12, which you are talking about, which is about two foot long that has numerous files. I did not go through it, but I understand it has in it the material you're talking about.

Q. It's not on the list.

A. It's listed as one filing cabinet.

Q. Is his marriage license listed on the inventory?

A. No.

Q. Is the title to his Blue-Cross, Blue-Shield listed on the inventory?

A. No.

Q. Is his title to his automobile listed on the inventory?

A. No.

Q. Yet, you people have those in your possession, don't you?

A. I presume we do, yes.

[fol. 45] Mr. Maverick: Now, Your Honor, may I ask the questions about the bombs and planes, and—

Mr. Zwiener: I again submit this is immaterial to any issues in this case. Being a member of the Communist Party is a crime in Texas. The question of constitutionality is not really a matter before this Court, and we object to this question and this line of questioning on the grounds that it's immaterial and irrelevant.

Mr. Maverick: The United States Supreme Court, in Nelson v. The State of Pennsylvania—

Mr. Barlow: We are willing to argue that, but—

The Court: Mr. Nail, to the best of your knowledge, and records, did you remove any bombs, airplanes, what else did you want?

Mr. Maverick: Gas, poison gas.

The Court: Poison gas—

Mr. Maverick: Machine guns.

The Court: Machine guns, knives, clubs—

Mr. Maverick: Airplanes.

The Court: I've done said that.

Mr. Maverick: Tanks.

The Court: Tanks, clubs—did you get any of those?

[fol. 46] A. No, we did not.

The Court: Alright.

Mr. Maverick: Thank you.

Q. Please go get this information I asked you for.

The Court: Well, let's get through with any other witnesses' testimony.

Mr. Maverick: Well, I want him to prove up these other things. I want him to go and get them and come back.

Mr. Barlow: We will reserve our right to cross examine him.

(At this time a short recess was called)

(After recess, Mr. Nail recalled back to stand)

Questions by Mr. Maverick:

Q. Mr. Nail—excuse me. Mr. Nail, I hand you a folder that you—just a few minutes ago, handed me and open it up and take therefrom a carbon copy of a letter written allegedly to Mr. Ben Levy, and a letter in turn allegedly from Mr. Ben Levy to John W. Stanford, Jr. Do you recognize that letter as coming from that file?

A. I have seen this letter in this file, but—

Q. Alright, will you mark this for identification? Now, the letter—now the letter I was just talking to you about has been marked as Applicant's Exhibit Number 14, has it not?

[fol. 47] A. Yes, sir.

Q. Alright, now, I'll hand you Applicant's Exhibit Number 14, to you, Mr. Barlow and move it into evidence.

Mr. Barlow: I have no objection to it. Mr. Levy might want to object, but I don't have any objections to it.

Mr. Maverick: I'll move this letter into evidence.

The Court: Alright.

Mr. Maverick: You accept it into evidence?

The Court: Yes.

Q. I have in my hand here Applicant's Exhibit Number 15, and remembering your authority was to get letters and publications concerning unlawful operation of the communist party, I want to move this into evidence. I'll show this to Mr. Barlow.

Mr. Barlow: I have no objection.

Q. I hand you applicant's Exhibit Number 15, which is a carbon copy of a letter addressed to Mrs. John F. Kennedy, and ask you if this was taken from that file?

A. This was taken from that file, there.

Mr. Maverick: I move it into evidence. Is it accepted, Your Honor?

The Court: Yes.

Q. Now, where is the—may I see that, please—I hand you Applicant's Exhibit Number 16 and ask you if that [fol. 48] folder of many letters came from those letters, books, records, and so forth picked up under the search warrant issued by the Honorable Sol Casseb, resulting in the search of December 27, 1963 of the J. W. Stanford home?

A. This came out of that cabinet, that came out of the home.

Q. Which came out of his home, and these are letters between Stanford and his Defense Committee in New York City, isn't it, pertaining to the McCarran Act, or do you know?

A. I just know the label on it, Mr. Maverick.

Q. Well, read the title of this first letter and see who it's addressed to there, read it to the Court, right here.

A. Gus Hall-Benjamin J. Davis Defense Committee, 22 East 17th Street, Room 1225, New York 3, New York.

Q. Thank you. I move this into evidence.

Mr. Barlow: We have no objection to it. You want to put the whole file in?

Mr. Maverick: The whole file. Thank you.

The Court: Alright.

Mr. Maverick: Just one minute, Your Honor, if you please—oh, could he also find such personal papers as his discharge, his naval discharge, marriage papers—marriage license and such other letters that—

[fol. 49] The Court: Can we, in the interest of time—

Mr. Barlow: I have in that answer that I filed, prepared, an inventory for the return to him of all that stuff.

The Court: Have you provided counsel with a copy?

Mr. Barlow: No. No, I haven't provided—

The Court: Alright, well, let's let him see that, and we might dispose of all that.

Mr. Barlow: Here's a copy of the inventory. We intend to offer all those—

Mr. Maverick: Will you stipulate, read this into the record.

Mr. Barlow: Alright, I will. Let's have this marked for identification.

Mr. Maverick: That's not enough identification on this, Jim. It says Frank Brothers. I don't know what that is.

Mr. Barlow: Well, there's a file on each one, and that's the inventory of those files, and I'm going to tender all the files. I'll bring the files up here, but I put in my pleading that I would tender them into Court, and into the record of the Court, showing what files I had tendered back to you.

[fol. 50] Mr. Maverick: Take this down. Will you agree with me that on the date and time in question and under the search warrant issued by the Honorable Solomon Casseb, Magistrate—

The Court: Jr.

Mr. Maverick: Solomon Casseb, Jr., Magistrate, and was seized under said warrant and taken from the home of John William Stanford, Jr., his automobile title, deposits at local banks.

Mr. Barlow: That's right.

Mr. Maverick: Frank Brothers, bills of Frank Brothers, bills of Frost Brothers, title papers to his home, invoices that he had paid, bills that he had paid to Joske's of Texas, medical insurance policy of Blue Cross and Blue Shield, Sommer's Drugstore Company, bills pertaining to furniture, bills pertaining to utilities and Wolf and Marx, bills pertaining to Wolf and Marx. Is that right?

Mr. Barlow: That's right.

Mr. Maverick: That's right. Mark this for identifica-
[fol. 51] tion, and that in further, just a minute, that in further, of these things you just mentioned, which you and I have stipulated to, you have prepared a rather skimpy inventory, marked as Applicant's Exhibit Number 17, and I would like to move this into evidence.

Mr. Barlow: Alright, you can put that in evidence, and here's a copy of the files.

Mr. Maverick: Let the record reflect that John William Stanford, Jr. will not accept this partial return of his property at this time as same may, in his opinion, constitute a waiver of his objection of the District Attorney of Bexar County, Texas, obtaining many things unlawfully, obtaining many things in his home, and that he will only take these items back under Order of the Court, the Honorable Solomon Casseb, Jr., Magistrate.

Mr. Barlow: Well, I want to tender them into the Registry of the Court, and I want the record to reflect that I have tendered them, and that's all I feel I have to do.

The Court: Alright, let's proceed.

[fol. 52] Cross-examination.

Questions by Mr. Barlow:

Q. Mr. Nail—

The Court: Wait just a minute.

Mr. Maverick: Pass the witness.

By Mr. Barlow:

Q. Mr. Nail, these records, for the purposes of the record, where were these located at the time of the seizure—at the time the seizure was made?

A. In that metal cabinet there, about two feet long.

Q. That metal cabinet had numerous files in it, didn't it?

A. That's right.

Q. And, the first file was the file that related to the Defense Committee Fund for the Gus Hall and Benjamin Davis, isn't that right?

A. That's right.

Q. And, the first letter in the first file that you picked up there, which Mr. Maverick has introduced into evidence, was written on the 25th day of December, isn't that correct?

A. That's right.

Q. Now, in that letter—

Mr. Maverick: What year.

Q. 1963. In that letter, which was a carbon copy that Stanford obviously had written, Stanford was discussing [fol. 53] with the Gus Hall-Benjamin Davis Committee the policies, which were taken in the Daily Worker with relation to the Oswald killing, is that right?

A. Substantially, that's the way I remember it. I don't remember.

Q. Now, he did not think the paper, that the Texas Worker was properly explaining the Oswald killing, and he had some suggestions for the Gus Hall-Benjamin Davis Defense Committee on how that matter should be handled in order to put the communism in the proper light, isn't that right?

A. As—as I recall, yes.

Q. Not only that, but in the second paragraph of that letter it showed that he enclosed a check for $5.00 for the Gus Hall-Benjamin Davis Defense Committee, isn't that correct?

A. To the best of my recollection.

Q. And, throughout this file in numerous letters it shows that he is enclosing money that he is sending to the various defense funds, isn't that correct, in these files that you seized?

A. Mr. Barlow, I have to be honest. I did not go through that entire file.

Q. But, when you looked through this file cabinet there were many instances in which he transmitted funds to the

[fol. 54] various defense committees to fight the McCarran Act, defense to fight the Smith Act and various other alliances and committees. There was one—one on the—on the Cuban Committee in there. There were various others—other sorts of issues that's been raised in the past.

A. That is correct.

Q. Do you recall the name of the Cuban Committee that the file was on? A. No, sir.

Q. Now, the books and pamphlets that you received, was there a book in there by Eugene Dennis?

A. I believe so.

Q. How many copies of it were there, or do you recall?

A. I don't recall.

Q. Did you take photographs of all the items you obtained from—from Mr.—from Mr. Stanford's house?

A. We took photographs of all the books and other literature we could take photographs of.

Q. How did you arrange the books and things so that you could take photographs of them?

A. Well, I had a five by six ply board, with, I don't know, two or three or four shelves on it, and I laid the books—I put 50 or 60 books on it, and each time we taken a photograph of it, and taken those off and put some more on.

[fol. 55] Q. Generally, the books that were taken, were they in single copies as people have in their private libraries?

A. No, generally they came in a group.

Q. Was there any distinction in the house made between the private library of Stanford and this material, this bulk material?

A. Well, the best I recall his desk, where it was located and—to the west of his desk it generally was where these books came in, multiple copies, anywhere from two to, say, 15 copies of the same thing, but—

Q. Take the book like the book on Gherman Titov, the astronaut. How many books of that sort were there?

A. I can tell by looking on the photograph or the list.

Q. Alright, I would like these marked for identification.

The Court: Do you want each one marked separately.

Mr. Barlow: No.

The Court: Well, put them in the folder and let her mark the folder and show the exhibit whatever it is containing.

Q. I'll show you what has been marked as Plaintiff's Exhibit Number one and ask you if you will examine this?

A. Yes.

Q. Now, what is that? Mr. Nail?

A. This is 37 copies of photographs I took of the books [fol. 56] and literature taken from Mr. Stanford's home.

Q. Alright, you took all those photographs, yourself?

A. I did.

Q. Where were they taken?

A. In my office.

Q. In the District Attorney's office here in the Courthouse?

A. In the Courthouse in the Chief Investigator's office.

OFFER IN EVIDENCE

Mr. Barlow: I offer into evidence State's Exhibit Number one.

Question by Mr. Maverick:

Q. Mr. Nail, did you—did I ask you earlier—

The Court: I don't know that he is through, counsel.

Mr. Barlow: I wasn't, but go ahead, I'll pass the witness.

Mr. Maverick: No, I wouldn't want to go out of turn.

Questions by Mr. Barlow:

Q. How long did this search take?

A. We arrived there about 2:20, and by the time we took Mrs. Stanford and drove over to look for Mr. Stanford, I would say, oh, I would estimate anywhere between 40 to 60 minutes passed before we began to search. We left there about 7:30 in the evening.

Mr. Barlow: I believe that's all. Pass the witness.

Re-direct examination.

[fol. 57] Questions by Mr. Maverick:

Q. Did you notice, Mr. Nail, that there was any kind of books that were left behind, that were not taken out?

A. There were books left behind that were not taken.

Q. Did you notice any books left behind that could be considered of an anti-communist nature?

A. I can't truthfully answer that. I did look at the books. I knew there was about as many books left as we took, but I was not going through the titles. I was recording as the Assistant Attorney General would pick out the books they wanted.

Q. I'll hand you applicant's exhibit marked for identification as 7, not yet in evidence, but a book called, "Cuba, Castro and Communism," by Edwin C. Stein. The incredible story of the bearded despot who betrayed a revolution, enslaved a nation, and is rattling Russian arms only 90 miles from our shore. Did you see that book?

A. I don't recall.

Q. Mark this for identification, please—did you—I'll hand you applicant's exhibit number 18, marked for identification, entitled, "Attempts of Pro-Castro Forces to pervert the American Press. Hearing before the subcommittee to investigate the Administration of the Internal Security Act and other Internal Security Laws of the Com-[fol. 58] mittee on the Judiciary, United States Senate, Government Printing Office, Washington, D. C." You don't know whether or not they left that behind?

A. I do not know.

Q. I'll hand you Applicant's Exhibit Number 19, entitled, "C[illegible]a by the United States Department of State" and ask you if you saw that, and if that was left behind?

A. I do not know.

Q. Mark this please, and this will be the last one. I'll hand you what has been marked Plaintiff's, or rather Applicant's Exhibit number 20, entitled, "Cuban Aftermath—Red Seeds Blow South. Implications for the United States of the Latin American Conference for National Sovereignty and Economic Emancipation, and Peace. Hearing before the Sub-committee to investigate the administration of the

Internal Security Act and other Internal Security Laws of the Committee on the Judiciary United States Senate, 87th Congress, United States printing, government printing office, Washington, D. C., 1961." Did you see that in the Stanford home?

A. I do not know.

Mr. Maverick: Pass the witness.

Mr. Barlow: No further questions.

[fol. 59] Mr. Lonny Zwiener, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?

A. Lonny Zwiener.

Q. Mr. Zwiener, are you an Assistant Attorney General of the State of Texas?

A. I am, Mr. Maverick.

Q. How long have you been?

A. Oh, I—since February of this year, 1963, I believe.

Q. You were a law professor from the University of Texas, weren't you? Haven't you?

A. I have, Mr. Maverick.

Q. Have you—to get you in my mind, weren't you at one time an Assistant U. S. Attorney here in San Antonio?

A. Yes.

Q. Were you under Charlie Herring or Russell Wine?

A. Charlie Herring.

Q. Now, let me ask you if you have ever been in the home of John William Stanford, Jr.?

A. I have.

Q. When was that?

A. That was December the 27th, 1963.

[fol. 60] Q. Would you describe what took place at his home?

A. As I recall, Mr., is it Morin, was—of the Sheriff's office knocked on the Stanford door and Mrs. Stanford came to the door.

Q. This was under the search warrant issued by the Honorable Solomon Casseb, Jr.?

A. Yes, it was.

Q. As Magistrate?

A. Yes, sir, that's true.

Q. Alright, go ahead.

A. Mrs. Stanford came to the door. Mr. Morin identified himself with the warrant to Mrs. Stanford. My testimony is largely the same as that of Mr. Nail and Mr. Morin. Mrs. Stanford did ask that she contact her husband, and I believe he informed her that was not necessary, that the officers wait until Mr. Stanford came, but they did permit Mrs. Stanford to try to call him on the phone, and then, I believe Mr. Nail and one of the deputy sheriffs went with Mrs. Stanford to attempt to locate her husband. When they returned, unable to locate him, they proceeded to conduct the search, pursuant to the warrant.

Q. Who conducted the search? Did you conduct the search, or did Mr. Barlow's office—Mr. Barlow's people conduct the search?

[fol. 61] A. Under the direction of the Sheriff's office, I assisted in the search. Mr. Barlow, the District Attorney here, requested myself and Mr. Murray Jordon to accompany the Sheriff to the Stanford residence to assist there.

Q. Did you and Mr. Jordon sign an affidavit on which Mr. Barlow made the application?

A. That's true, sir.

Q. Do you know why Mr. Barlow had two Assistant Attorney Generals who live in Austin, Texas, to sign the—sign it, rather than one of his own staff, the San Antonio Police Department, or the Bexar County Sheriff's office?

Mr. Barlow: I'm going to object to that because he would be incompetent to testify to what I know.

Mr. Maverick: I don't know until he answers.

Mr. Barlow: It's immaterial and irrelevant, and I think he is incompetent to testify as to why I do something.

The Court: If he knows, he can answer.

Mr. Zwiener: Well, I would like to point out, Your Honor, if I may, as one of the Attorneys in this case that

I think the Affidavit speaks for itself. We did swear we had the information and based on the facts as stated in [fol. 62] the affidavit to justify the feeling that these documents and so forth relate to communism and used in the furtherance thereof.

Mr. Maverick: He is not answering the question. The question, Judge, you said ought to be answered, I asked him—

Mr. Zwiener: I'm further making that objection as one of the attorneys, Your Honor. The affidavit speaks for itself.

Mr. Maverick: The Court's ruled.

The Court: Well, do you know of your own knowledge?

A. I have a suspicion, Your Honor. I do not have.

The Court: Other than a suspicion. I'm talking about do you know?

A. No, I don't know.

The Court: You don't.

A. Of course, I don't know what's in Mr. Barlow's mind.

Q. Did Wagner Carr tell you to sign that affidavit?

A. No, he did not.

Q. Did you have any conversations with Mr. Barlow as to why you were signing the affidavit?

Mr. Barlow: I want to object to that. The affidavit speaks for itself. The fact that he signed it, and—

[fol. 63] Mr. Maverick: Well, I—

Mr. Barlow: And swore to it. It's all there—

The Court: Just a minute. She can't take both of you talking at the same time, and I'm sure both of you know the Rules of Evidence how to conduct a hearing. If you don't, we will have a course in that. Now, let's take one thing at a time. What's your objection?

Mr. Barlow: My objection is that the Affidavit speaks—the affidavit, upon which the search warrant is based, speaks for itself, and that he cannot go behind why the man made the affidavit. An affidavit for a search warrant before a Magistrate is to be tested by the affidavit, itself.

The Court: I'll sustain the objection.

Mr. Maverick: Well, for the purposes of perfecting my Bill, I now move the Court for permission for him to answer the question.

Mr. Barlow: I'm going to object to him going into any part of this for the purposes of his Bill because this a non-appealable hearing before a Magistrate, and I don't see why he should be allowed to perfect his Bill in a non-[fol. 64] appealable hearing.

Mr. Maverick: It is appealable. The Court of Criminal Appeals says there is an appeal before the Court of Criminal Appeals—I have one case on it.

Mr. Zwiener: I believe the Court of Criminal Appeals has ruled they did not have jurisdiction.

Mr. Maverick: Are you answering as—

Mr. Zwiener: I'm answering as one of the Attorneys in the case, Mr. Maverick.

Mr. Maverick: Now, Judge, I would like to get some lawyers friend in here and stake them out around the courthouse.

Mr. Barlow: Now—

The Court: Just a minute. He has got a right as one of the Attorneys to make an objection, and he stated that's the way he was making it. Now, the Court has ruled.

Mr. Maverick: What did you say, Your Honor?

The Court: I sustained the objection.

Mr. Maverick: And, refuse to permit me to make my Bill?

The Court: As I stated to you this morning, if you can show me that I have got the right to permit you to have a [fol. 65] Bill of Exceptions in this type of a hearing, until you show me that authority, then I can do nothing further.

Mr. Maverick: As of now, the Order of the Court is, you refuse—

The Court: I haven't refused you. I said I sustain the objection, period.

Mr. Maverick: I don't want to sound like I'm quarreling with you, Judge, but—

The Court: I'm not going to let you quarrel with me. Don't sound like you're quarreling with me, counsel. I'm

telling you that until you show me, I will reserve that until you show me. I'm not denying you anything.

Mr. Maverick: Alright.

By Mr. Maverick:

Q. Now, Mr. Zwiener, who decided—who decided what would be taken out of the house of John W. Stanford, Jr. on the afternoon in question, December 27, 1963?

A. Mr. Murray Jordon of the Attorney General's office.

Q. You also participated in it.

A. I did to some extent, however, my participation was mainly limited to handing books that were designated from the shelves to the—to Mr. Nail, a member of the Sheriff's office, who recorded them for the purposes of making a [fol. 66] return.

Q. As you people went along picking up books and records, well, let's take this book—well, let's don't take this book, and let's take that book, and you made a selection of some books to take and some books not to take?

A. As the determination was made, as I say, it was largely Mr. Jordon's determination.

Q. What kind of books was left behind?

A. Well, I don't know how to answer that. I don't recall specific books that were left behind. I will say this, that by in large books that appeared to be individual copies, one copy of books that were part of Stanford's library were not taken. I don't know whether that was true in all cases, but as I say, it was largely true. The books that were taken were those books of which there were a number of copies of the same item.

Q. Well, now, directing your attention to Applicant's Exhibit Number 7, which is not yet in evidence, and again I mention the title to you, "Cuba, Castro and Communism," by Edwin C. Stein. The Incredible story of a bearded despot who betrayed a revolution, enslaved a nation, and is rattling Russian Arms only 90 miles from our shore. Why didn't you take those kind of books, also?

[fol. 67] A. Mr. Maverick, I do not know that book was there, or why it was not taken. I can answer your question perhaps as an attorney, rather than a witness, if the Court

will permit me. As disclosed by our affidavit, we had information that certain books relating to the communist party were present on the premises of Stanford. The theory, I suppose, the search warrant was to books and records there relating to the search warrants, I mean relating to communism and were instrumentalities or instruments to promote communism. It was an attempt, I suppose, there was an attempt to determine what books would fulfill these particular requirements. Again, I'm speaking as an attorney in this case.

Q. Fine. Let's talk as brother attorneys back and forth. The affidavit only says a broad and general statement you were to get books, records, pamphlets concerning communist party.

A. I believe, if I may correct you that—

Q. Wait a minute, before you correct me. Just wait a minute, please. Why wasn't the books and pamphlets that you have in front of you that denounces communism, pamphlets of the United States Army, the United States War Department, denouncing communism, why weren't those taken? Those concern communism, don't they?

A. Again, I can answer your question—I must correct [fol. 68] you as to what the affidavit states. It said certain books, records and pamphlets that were unlawfully possessed, and used in violation of Article 6889-3, and article 6889-3A of the Revised Civil Statutes of Texas. Now, there was those instruments, books and records that we had information about that were considered to be communistic from confidential sources, which we have obtained, that were looked for and seized. As I say, Mr. Maverick, Mr. Murray Jordon made the determination, but that was—

Q. I would like to direct your attention to Section 9, Article 6889-3A of the Code of Civil Procedure of Texas, being the Anti-Communist Control Act under which you got your search warrant. I would like to quote it, "A search warrant may be issued by any Judge of any Court of Record in this State on the written application by the District Attorney or a County Attorney, within their respective jurisdiction accompanied by an affidavit of a credible person setting forth the name and description of the person,

charging or stating the name or description, the address of the described premises showing this," and this is what I want to emphasize, "showing that the described premises is a place where some specified phase or phases of this act are violated or are being violated or where keeping any books, records or pamphlets, cards, lists, memoranda, rec- [fol. 69] ords, written instruments, of any kind showing any violation of some phase or phases of this Act." Now, tell me, you tell me in this affidavit which you signed where there is set out a particular violation by John W. Stanford, Jr. of some specified phase or specified phases of this Act?

Mr. Barlow: I want to object to the question on the grounds the affidavit speaks for itself, and number two, he is calling upon him to give a legal conclusion and which I do not think is proper, and I object. The affidavit has been admitted into evidence and it speaks for itself. It either says what it says or it doesn't say what it doesn't say, but I think whatever it says, it says, and I think it's immaterial and irrelevant to ask this man's interpretation of the affidavit. That's for the Court, and it invades the province of the Magistrate for him to answer.

Mr. Maverick: I would like to reply, Your Honor. I hold in my hand Applicant's Exhibit Number 11, an affidavit signed by Mr. Zwiener refers to the Stanford home as a place where books, records, receipts, lists, memoranda, [fol. 70] pictures, recordings, and other written instruments concerning the Communist party in Texas, are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A Revised Civil Statutes of the State of Texas. Now, I just read Section 9 of the act under which the subpoena was issued, which says a specified phase or specified phases of the act must be set out. Now, you permitted Mr. Zwiener to talk as a lawyer on the stand, and if he can aid the Court in pointing out some specified phase or specified phases of the Act, I think it would be helpful.

Mr. Zwiener: I object to that. It's argumentive and it's not a proper question. The affidavit speaks for itself.

The Court: Your question is directed to Mr. Zwiener as a witness?

Mr. Maverick: Yes, sir.

The Court: I'll sustain your objection.

Q. Alright, Mr. Zwiener, do you recall any single object taken from the Stanford home on December 27, 1963 under [fol. 71] Section—under the search warrant issued by Judge Casseb, which could be used as a physical object of violence to overthrow the United States of America?

A. Not, Mr. Maverick, unless you consider throwing hard back books at people, like a weapon.

Mr. Maverick: Pass the witness.

Cross-examination.

Questions by Mr. Barlow:

Q. You stated you had information as to the use of the books, but you never did describe what information was—this was. Would you describe that, what that was?

A. Mr. Barlow, from certain confidential sources, being credible citizens of the State of Texas, we learned the following, that John Stanford was and is a communist, secondly that he has for many years distributed literature which has been described to us by credible persons as communistic literature, which follows the communist line and is designed to forward the aims and purposes of the Communist Party. These credible persons also informed us that this type of literature, pamphlets, and so forth were located on the premises of John Stanford, and as recently, as disclosed by the affidavit, December 12th that this type of literature which had been previously indicated and described and labeled as communist literature was mailed from the home address of John Stanford.

[fol. 72] Mr. Barlow: Pass the witness.

Mr. Murray: Nothing further.

[fol. 73] MR. V. MURRAY JORDON, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?
A. Vernon Murray Jordon.
Q. Are you an Assistant Attorney General?
A. Yes, I am.
Q. I want to know a little bit about your background, and if I may, Mr. Jordon, where are you from in Texas?
A. Brady.
Q. Brady?
A. Yes, sir.
Q. Are you a graduate of the University of Texas Law School?
A. Yes, I am, 1959.
Q. 1959, and before that did you have a pre-law degree of some kind?
A. I had a, yes, sir, I graduated from the University of Texas with a BBA Degree.
Q. BBA Degree. Now, in that course at the University of Texas, where you obtained your BBA Degree, did you have—how many courses did you have on the subject of communism?
[fol. 74] A. I had none.
Q. What kind of a—
A. Excuse me, just a minute, other than the course that would casually mention it; I had none specifically on communism.
Q. What did you major in for your BBA?
A. I was a finance major.
Q. Finance major. You studied such things as auditing, bookkeeping and related matters?
A. Yes, sir.
Q. It's a business course?
A. That's correct.
Q. In law school, how many courses did you have on communism?

A. None specifically on communism.

Q. Have you gone to some kind of school that trained you specifically on the subject of communism?

A. No, sir, other than possibly lectures in the Navy, no specific schooling.

Q. That's the reserve meetings you mean, reserve Navy, is that correct?

A. No, sir, during active duty-time.

Q. During active duty-time?

A. Yes, sir.

Q. You have not gone to any specialized school, say four [fol. 75] months or six months or a year?

A. No, sir, I have not.

Q. You have not. Alright, I'll ask you if you were in the home of John William Stanford, Jr. on or about December 27, 1963?

A. Yes, sir, I was.

Q. Did you go there under the search warrant issued by Judge Casseb, who is sitting to your right?

A. Yes, sir, I did.

Q. Tell us what happened?

A. I believe he was the Captain of the Department, or something, Mr. Tony Morin was the one in charge, and we had been asked to go with him in his execution of the search warrant. He knocked on the door several times and Mrs. Stanford answered after several knocks, and asked who was there, and he answered that it was the Sheriff's Department. At that time she opened the door and, just slightly, and from—I was standing probably maybe 20 feet, maybe further, and I did not hear all the discussion, however, I observed Mr. Morin reading from the, what looked to be the original of the search warrant at that time, and there was further discussion which was out of my earshot. We proceeded inside and there was a discussion—there was a discussion about, she wanted her husband present, so we [fol. 76] all left and I think she locked the door. I do not know for sure if she locked the door and the deputy and I believe Mr. Charlie Nail from the District Attorney's office took Mrs. Stanford and left the premises and it was some possibly an hour before they returned. At that time we did enter the house, and I was not the first to enter. I was

probably among the last and I do not know where everyone went. At that time, however, she made some phone calls before we proceeded on in, and I went to the back of the house where there was a small room, you wouldn't call it a bedroom, because it was rather small. It was covered with books on the west and north walls. There was a large desk on the south wall. There was another room just adjacent to that. I observed a bedroom which there was originally a door into what appeared to be a study. It had numerous number of books on the, I believe it was the north wall of that room.

Q. You have been present this morning during the giving of the testimony, have you not?

A. Yes, sir, the entire time.

Q. Yes, sir, and you have heard Mr. Nail of the Bexar County Criminal District Attorney's office, and Mr. Lonny Zwiener of—your colleague, on Attorney General Wagner Carr's staff, testify that it—the choice of what was taken [fol. 77] out was largely your choice. Do you remember that testimony?

A. I believe Mr. Nail said the Assistant Attorney Generals made the choice. I do not believe—

Q. You heard Mr. Zwiener?

A. I heard Mr. Zwiener, yes, sir.

Q. He said Mr. V. Murray Jordon largely made the selection.

A. Yes, sir.

Q. On what, with your background and training in communism, on what basis did you decide what books to take out and what books not to take out?

A. Since I became employed as Assistant Attorney General, I was asked to investigate the Communist Party of the State of Texas, and in that investigation I talked to confidential informants and in discussing with these confidential informants I was told that Mr. Stanford was an Official in the Communist Party of Texas and that he had distributed literature which was described as communist party literature on official matters of the communist party. I was also given, not to keep, but just to look at, various samples of this communist party literature which was reported to me by these informants that they had received

this literature from Mr. Stanford at a Communist Party meeting.

[fol. 78] Mr. Maverick: Your Honor, I would like, at this moment, to let Mr. Stanford take from his file drawer, well, just, maybe we can do it this way. Mark this for identification, please.

Q. I'll hand you Applicant's Exhibit Number 21, an advertisement for the sale of books from "All Points of View," Mr. Stanford's mail order book store, which was sent to Dr. Henry Steele Commager, returned for insufficient evidence, and I'll ask you whether or not that—you saw those types of pamphlets at the residence of John Stanford, advertising books in his mail order book store?

A. I may have. I do not recall having seen one, but I may have seen one there.

Q. Does this—does this look like the type of pamphlets you picked up?

A. This does not appear to be a pamphlet, other than a list of books for sale.

Q. Just a minute—Jim, over in that filing cabinet—

Mr. Barlow: He may take out what he wants.

The Court: Are—did you ask for a recess, gentlemen, so that you can confer on this.

Mr. Maverick: I think we are through conferring.

The Court: Let's proceed. I would like to be in on it.

[fol. 79] Mr. Maverick: Maybe we better have a short recess.

(At this time a short recess was called)

(Witness Jordon remaining on stand, examination continues)

OFFER IN EVIDENCE

Mr. Maverick: Let's have this marked as Applicant's Exhibit Number 22. Mr. Barlow, do you agree that I may move this into evidence?

Mr. Barlow: No objection.

Mr. Maverick: Numbers 22 and 23.

The Court: Alright, let's proceed.

Mr. Maverick: Pass the witness.

Cross-examination.

Questions by Mr. Barlow:

Q. Did you state you had been informed by these confidential informers as to how this material was used?

A. Yes, sir.

Q. How was the material actually used?

A. Other than being actually distributed at meetings, there would be discussion groups wherein Mr. Stanford would lead the discussion, that discussion about an article from these pamphlets and this was stated to be the communist party line or leaf of the communist party line.

Q. Now, these meetings, were they still taking place in [fol. 80] 1963, the communist party meetings?

A. My informant so informs that they were.

Mr. Barlow: That's all.

Re-direct examination.

Questions by Mr. Maverick:

Q. Mr. Jordon, I hand you again Applicant's Exhibit Number 7, a book that's violently anti-communist. Why wouldn't you pick up a book like that and take it out?

A. I don't recall seeing that book. I do recall leaving one book, however, that's the only particular book.

Q. Did you even see any books unsympathetic to the communists?

A. Yes, sir.

Q. Why didn't you take those out?

A. I felt that my position there was as an Assistant or the assisting the Sheriff's Department in making selections as to what would come under the affidavit.

Q. The affidavit said though, that you were, in the order issued by Judge Solomon Casseb, Jr., you were to pick up books concerning the communist party.

A. Well, used by the communist—

Q. It says concerning the communist party. Why wasn't the Speech by the late John F. Kennedy denouncing the Communist party taken?

A. Denouncing the communist party. It doesn't fall un-
[fol. 81] der my idea of the definition as in the affidavit.

Q. What does the title book store, All Points of View, suggest to you, All Points of View?

Mr. Barlow: I want to object unless we are going to start playing word games. I think it's improperly phrased, to give him a title of a bookstore, and ask him what it suggests.

The Court: I'll sustain your objection.

Mr. Maverick: Pass the witness.

Recross examination.

Questions by Mr. Barlow:

Q. Isn't it a fact you had been described the type of material that was used in these meetings, and that's the type of material you sought to seize?

A. Yes, sir.

[fol. 82] Mr. Hugh Nations, called as a witness by the Applicant, after first being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Maverick:

Q. State your name, please?

A. Hugh Nations.

Q. Hugh Nations. You are a reporter, a newspaper reporter for the Express and News?

A. Yes, sir.

Q. How long have you been with them, Hugh?

A. Eight or nine months.

Q. A year and nine months?

A. Eight or nine.

Q. Eight or nine months?

A. Yes, sir.

Q. I'll ask you if you were called by Mrs. John William Stanford, Jr. on December—December the 27, 1963?

A. Yes.

Q. Did she at that time tell you some people were at the house?

A. Yes.

Q. And, it was she who called the Press, and you being the Press?

A. She called me.

Q. She called you?

[fol. 83] A. Yes.

Q. That's right. Did you alert other press media?

A. No, I alerted the City Editor of the Express, but as far as the other media, radio, T.V. and any other newspapers, no.

Q. But, they all came, did they not, later on?

A. They swamped in, yes, sir.

Q. Matter of fact some of you were standing outside, and—well, never mind. The point I want to make, though, the wife of John Stanford called you?

A. Yes, sir.

Q. And, called a representative of the local newspaper?

A. Yes, sir.

Q. Did she act like she was trying to hide anything from you?

A. No, sir.

Q. I hand you the San Antonio News for Friday, December 27, with headlines, "Admit Red Ties, San Antonio Man Ordered," and asked you if you recognize that fine, high-class, first rate newspaper?

A. I believe I do, sir.

Q. That's the San Antonio Evening News, Express-News, San Antonio, Texas?

A. Yes, sir, this is our third edition for that particular day.

[fol. 84] Mr. Barlow: If he is going to offer that into evidence, I'm going to object. That's completely hearsay, any part of it.

The Court: He hadn't offered it yet, counsel.

OFFER IN EVIDENCE

Mr. Maverick: I'll move into evidence Applicant's Exhibit Number 23 for the reason of showing that it is—

Mr. Barlow: Well, I'm—

Mr. Maverick: Let me finish please, for the reason of showing on the headlines of a local newspaper in this community the Federal Government endeavored and had begun action against John Stanford, Jr., prior to the time of the search warrant.

Mr. Barlow: I'll withdraw my objection to it. No objection.

The Court: Alright, let's proceed.

Mr. Maverick: Pass the witness.

Cross examination.

Questions by Mr. Barlow:

Q. What time did this edition hit the street, the third edition?

A. I can't answer that, Mr. Barlow. I believe I copied that line. This is an editorial copy, not disclosing any company—it actually hit at 11:30.

[fol. 85] Q. Well, this edition doesn't hit the street until well up in the afternoon, around three o'clock?

A. No, sir, I'm sure it must be on the news stands by 12:45.

Q. 12:45?

A. This is the street sale edition, I understand.

Mr. Barlow: That's all.

Redirect examination.

Questions by Mr. Maverick:

Q. Is this what you call the bull-dog edition?

A. No, sir, the bull-dog edition is your first edition. For instance, the Sunday Bull-dog is put out on Friday night. This is a bull-dog.

Q. That's a real dog, isn't it.

The Court: Let's proceed, counsel.

Mr. Maverick: That's all, Your Honor, the applicant rests.

Mr. Barlow: The State rests.

STIPULATION AS TO APPLICANT'S EXHIBIT NO. 16

Mr. Barlow: We have agreed by and between the State and the Defendant in this case that with relation to an exhibit which was introduced which is Applicant's Exhibit 16 that since this exhibit contains at least a hundred or more letters, that we would, for the purposes of allowing the exhibit to go to the Court, but for the purposes of [fol. 86] the record, we will agree to substitute approximately ten or more sample letters in the record, rather than have to reproduce the entire file, if the Court agrees to this, in the record.

Mr. Maverick: And, that half of those so selected by me and half of those selected by Mr. Barlow.

Mr. Barlow: Just to keep from incumbering the record, in case we should have to have a transcription of this record.

The Court: Alright.

Mr. Maverick: Thank you.

[fol. 87] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 88]

AGREEMENT OF COUNSEL AS TO RECORD

We, the Attorneys of record for the respective parties, hereby agree that the above and foregoing pages of typewritten matter contain and comprise a true and correct transcript of testimony adduced on the hearing of said cause, set out in the caption hereto.

Witness Our Hand this the 28th day of January, A. D., 1964.

Maury Maverick, Jr., Attorney for the Applicant.

James E. Barlow, Attorney for the State of Texas.

[fol. 89]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 6

CERTIFICATE UNDER ASSUMED NAME LAW

STATE OF TEXAS
COUNTY OF BEXAR

In compliance with the law of the State of Texas, known as the "Assumed Name Law", I, the undersigned, hereby state that I INTEND, conducting or transacting, or intend to conduct or transact, business under the name of ALL POINTS OF VIEW at P.O. BOX 321 in the city of San Antonio, Bexar County, Texas, and the true full name ..... and post office address ..... of each person conducting or transacting, or intending to conduct or transact, such business—as follows:

Name	Postoffice Address
JOHN W. STANFORD	SAME

Witness MY hand at San Antonio, Bexar County, Texas, on this the 23 day of APRIL, A. D. 1962.

JOHN W. STANFORD

THE STATE OF TEXAS
COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared JOHN W. STANFORD known to me to be the person ..... whose name ..... subscribed to the foregoing instrument and acknowledged to me that ..... he ..... executed the same for the purpose and consideration therein expressed.

FRED HUNTRESS
County Clerk, Bexar County, Texas
By E. ARRIAGA, Deputy.

SEAL

NOTE: Each individual member of the firm must sign and have his signature acknowledged.

[fol. 90]

THE STATE OF TEXAS
COUNTY OF BEXAR

I, JAMES W. KNIGHT, County Clerk of Bexar County, Texas, do hereby certify that the copy on the reverse side hereof is a true and correct copy of a Certificate of Registration under the ASSUMED NAME LAW of ALL POINTS OF VIEW as the same appears on file in my office under File #1993.

IN TESTIMONY WHEREOF, witness my hand and official seal of office in the City of San Antonio, this the 6th day of January A.D. 1964.

JAMES W. KNIGHT
County Clerk, Bexar County, Texas
By /s/ MANUEL D. HEALD, Deputy

No. 1993

Name of Business:

ALL POINTS OF VIEW

Location:

P.O. BOX 321

CERTIFICATE UNDER ASSUMED NAME LAW

Filed in my office this 23 day of April A. D. 1962 at 1:10 o'clock P. M.

FRED HUNTRESS
County Clerk, Bexar County, Texas
By E. ARRIAGA, Deputy.

[fol. 91]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 11

THE STATE OF TEXAS
COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared V. MURRAY JORDAN and LONNY F. ZWIENER, who being by me duly sworn, upon oath, depose and says:

That they have good reason to believe and do believe that a certain place and premises in Bexar County, Texas described as two white frame houses and one garage located at the address of 1118 West Rosewood; in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas and the operations of the Communist Party in Texas, are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

Such belief is based upon the following information: Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party.

V. MURRAY JORDAN
LONNY F. ZWIENER

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

/s/ TOM LEE
Notary Public in and for Bexar
County, Texas

(Seal)

[fol. 92]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 12

THE STATE OF TEXAS
COUNTY OF BEXAR

APPLICATION FOR SEARCH WARRANT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Criminal District Attorney of Bexar County, Texas, and makes this application for a search warrant in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas, and in support of the same would show the Court as follows:

1. That he has good reason to believe and does believe that a certain place and premises in Bexar County, Texas, described as two white frame houses and one garage, located at the address of 1118 West Rosewood, in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A, Revised Civil Statutes of the State of Texas, and that such belief of this officer is founded upon the following information:

That this officer has received information from two credible persons that the party named above has such books and records in his possession which are books and records of the Communist Party including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th of December, 1963 of pro-Communist material.

2. That this application for a search warrant has at-
[fol. 93] tached hereto the affidavit from two credible persons as to the information received.

WHEREFORE, PREMISES CONSIDERED the State of Texas asks that a search warrant issue to search the above described premises for the above described list of items set out above, and that such search warrant be directed as required by law.

Respectfully submitted,

/s/ JAMES E. BARLOW
James E. Barlow
Criminal District Attorney

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

/s/ TOM LEE
Notary Public in and for Bexar County, Texas

(Seal)

[fol. 95]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 13

THE STATE OF TEXAS
COUNTY OF BEXAR

To the Sheriff or any other Officer of Bexar County, GREETINGS:

WHEREAS, an application of the Criminal District Attorney accompanied by affidavits of two credible persons made on oath and in writing, in accordance with law, has this day been made before me alleging that the premises described as two white frame houses and one garage located at the

address of 1118 West Rosewood in the City of San Antonio, Bexar County, Texas, and being the premises under the control of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

You are therefore hereby commanded to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes, State of Texas, and to take possession of same.

HEREIN FAIL NOT, but have you then and there this warrant within three days from date of its issuance with your return thereon, showing how you have executed the same.

WITNESS my hand this the 27th day of December A.D. 1963.

/s/ SOLOMON CASSEB, JR.
Judge, 57 Judicial District,
Bexar County, Texas
Judge Presiding

[fol. 96]

No. .....

SEARCH WARRANT

THE STATE OF TEXAS

vs.

SEARCH WARRANT

Issued , 19

Came to hand 27th day of Dec. 1963 and executed the 27th day of Dec. 1963, by .

W. B. "BILL" HAUCK, SHERIFF
Bexar County, Texas
By /s/ TONY MORIN

Filed , 19

Judge, Judicial District,
Bexar County, Texas

[Handwritten notation—The attached list of Material was seized under this Search Warrant.]

[fol. 97]

(1) USA TODAY

Helen & Scott Nearing

(1) THE TRAGEDY OF EMPIRE
Social Science Handbook #3

Scott Nearing

(1) THE REVOLUTION OF OUR TIME

Scott Nearing—Handbook #5

(1) TO PROMOTE THE GENERAL WELFARE—

Scott Nearing Pamphlet #1

(1) OUR RIGHT TO TRAVEL

Helen & Scott Nearing—Pamphlet #3

(1) ECONOMIC CRISIS IN THE UNITED STATES

Scott Nearing Pamphlet #4

(1) MOSCOW CONFERENCE FOR GENERAL DISARMAMENT & PEACE

Dr Homer A Jack

Stapled Papers

(1) FAIR PLAY FOR CUBA COMMITTEE

October 28 1961 1-Page

(1) THE CASE OF PUERTO RICO—MEMORANDUM TO THE UNITED NATIONS

5¢

(1) COMMUNISM, SCIENCE AND CULTURE

Jacques Duclos

[fol. 98]

(1) ON THE PARTY

Liu Shao-Chi Peking 1950

(2) INSIDE THE KHRUSHCHEV ERA

Giuseppe Boffa

(3) WORLD WITHOUT WAR

J. D. Bernal

(1) GENE DEBS—THE STORY OF A FIGHTING AMERICAN

Herbert M. Morais—William Cahn

(1) THE SOVIET POWER
Hewlett Johnson

(1) WHAT IS TO BE DONE?
V. I. Lenin

(1) HOW THE SOVIET ECONOMY WORKS
Victor Perlo

(1) AMERICAN CAPITALISM 1607-1800
Anna Rochester

(5) THE STALIN ERA
Anna Louise Strong

(1) TRIAL OF AMERICAN U-2 SPY PILOT
Moscow August 1960 Soviet Booklet 76

(1) AGENTS OF PEACE
Albert E Kahn

[fol. 99]

(1) SPEAK OUT—AMERICA WANTS PEACE
Arthur D Kahn

(1) WASTE IN AMERICAN MEDICINE
A Committe of Physicians
Monthly Review 35¢

(1) THE CASE FOR SOCIALIZED MEDICINE
by R. W. Tucker

(1) BIOLOGY & MARXISM
Marcel Prenant

(1) THE COMMUNIST PARTY OF THE USA
Earl Browder

(1) THE DEMOCRATIC FRONT
Earl Browder

(1) THE ECONOMICS OF COMMUNISM
Earl Browder

(1) IS COMMUNISM A MENACE
Earl Browder

(1) TEHERAN AND AMERICA
Earl Browder

(1) THE PEOPLES FRONT
Earl Browder

(1) TEHERAN—OUR PATH IN WAR & PEACE
Earl Browder

[fol. 100]

(1) SOVIET EDUCATION TODAY AND TOMORROW
Elizabeth Moos

(1) SOVIET SCHOOLS REVISITED
Elizabeth Moos

(1) PROCEEDINGS 16th NATIONAL CONVENTION COMMUNIST PARTY USA
Feb. 9-12—1957

(1) CAMPAIGN BOOK—
PRESIDENTIAL ELECTIONS 1940

(1) 1948 ELECTION PLATFORM OF THE COMMUNIST PARTY

(1) 1952 ELECTION PLATFORM OF THE COMMUNIST PARTY

(1) WHAT IS SOCIALISM
Ernest Fischer

(1) THE COMMUNISTS TAKE A NEW LOOK
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12	5, 6, 7, 9, 10, 11 & 12
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[fol. 129]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 14

1118 W. Rosewood
San Antonio 1, Texas

July 14, 1963

Mr. Ben G. Levy
Attorney at Law
708 Scanlan Building
Houston 2, Texas

Dear Mr. Levy:

I want to thank you for your letter of July 8. Your good wishes were welcome and heartening. Such letters as yours, expressing devotion to the Bill of Rights, give me confidence that the days of thought-control harassments will not be with us for too much longer.

After our telephone conversation two years ago, I followed your suggestion in getting in touch with the New York office of the ACLU. Mr. Melvin L. Wulf, now ACLU legal director, wrote me at that time that the ACLU would refer me to a San Antonio attorney if I needed one. When Attorney General Carr recently announced his intention of prosecuting me under the Texas Communist Control Act, I again wrote the ACLU. Mr. Wulf wrote me on the same date as your letter that the ACLU would still be willing to refer me to a San Antonio attorney if I am indicted under the Texas law.

I am enclosing July 11 SAN ANTONIO NEWS stories that discuss the latest developments in regards to the Texas law.

In regards to the latest group of McCarran Act cases, including mine, our attorneys entered a motion with the Subversive Activities Control Board last week that all further proceedings be postponed until after Labor Day. The Justice Department had previously indicated its agreement with this motion, and I imagine that the SACB will rule favorably on it.

It seems to me that the climate of public opinion will be one of the most important factors in determining the outcome in all these cases. I don't know whether the Houston ACLU has taken or contemplates taking any stand concerning the McCarran Act cases or the attempt to enforce the Texas Communist Control Act. If it does take any stand, I would appreciate your advising me of it.

Again, many thanks for your letter.

Sincerely,

[fol. 130]

BEN G. LEVY
ATTORNEY AT LAW
708 SCANLAN BUILDING
HOUSTON 2, TEXAS

FAIRFAX 3-3751

July 8, 1963

Mr. John W. Stanford, Jr.
P. O. Box 321
San Antonio 6, Texas

Dear Mr. Stanford:

In a sense, this letter is somewhat belated, but in another. I hope it's premature.

You may recall that I have been active in the Houston Chapter of the American Civil Liberties Union, and am at present the Chairman of the Legal Committee. Two years ago you requested counselling from me about slanderous articles appearing in the local press against you, and I promised to aid you in the event that you could not locate local counsel (preferably ACLU counsel, particularly Maury Maverick), and suggested that you write the New York office for additional aid.

This gave me the excuse to write you this missive because, you know, it's considered unethical for a lawyer to volunteer his services. Anyway, I could not help seeing in the local

press some sensational razzle-dazzle contemplated by the Governor and the Attorney-General of this fair State, as well as RFK's magnificent attempts to scourge the Nation of its dangerous heretics (the same day he announced that he would not prosecute Wallace for obstructing justice in Mississippi), and both of these actions involved you. What makes this letter a little belated is that I should have written you immediately, but thought that you might have your own lawyer by now. I recently learned, however, from a mutual acquaintance—an ex-Sunday School pupil of mine —that you may not have anyone to represent you in these matters (none of which, for your sake as well as the Country's, I hope will ever be actuated).

The upshot of this is that I want you to know that I shall be honored and happy to represent you* if you are unable to secure counsel of your own choice, and I am quite sure that I will obtain official ACLU backing in doing so.

On a more personal basis, I want to wish you well, and admire you for your courage in defending your beliefs. Someday soon, I trust, men will be judged by their actions and not their thoughts, or what is claimed to be their thoughts.

Very truly yours,

/s/ Ben G. Levy
Ben G. Levy

BGL/ni

* on a non-fee, expenses only, basis

[fol. 131]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 15

1118 W. Rosewood
San Antonio, Texas 78201

November 24, 1963

Mrs. John F. Kennedy
The White House
Washington, D. C.

Dear Mrs. Kennedy:

I have been shocked and filled with grief by the assassination of President Kennedy. I understand how terrible this tragedy must be for you, as it is for the nation; and my wife and I wish to extend to you and your children, and through you to Mr. Kennedy's family, our deepest sympathies.

I disagreed with President Kennedy on many political matters. You may know that the Attorney General petitioned the Subversive Activities Control Board to order me to register under the McCarran Act as a Communist. But whatever the political differences I had with President Kennedy, I believe that he earnestly sought to make this a better world, a peaceful world, a more reasonable world, with increased opportunities for all men.

Your husband's noblest actions and statements will live as an inspiration to all future generations. His death is a very deep loss for all of us.

Very sincerely yours,

John W. Stanford

[fol. 132]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT No. 16

1118 W. Rosewood
San Antonio, Texas 78201

December 25, 1963

Gus Hall-Benjamin J. Davis Defense Committee
22 East 17th Street, Room 1225
New York 3, New York

Attention: Mrs. B. C. Colón

Dear Mrs. Colón:

I thought you would be interested in the enclosed letter to Dr. Harry F. Ward, even though I'm sure I've already written you about most of the matters I discuss with him.

I'm also enclosing another check for $5.00.

The Court of Appeals ruling was a magnificent victory. I would think that it follows from this ruling that all registration orders are unenforceable. However, the right of the SACB to continue issuing orders as a form of harassment still stands, and we need to point out the harm that this harassment does our country.

In regards to Oswald, I think that one line of reasoning I've seen in THE WORKER and elsewhere is false and indirectly harms the struggle against the McCarran Act.

The question is raised: "Why wasn't Oswald kept under surveillance?" And the answer: "It could be because he was a government agent of some sort."

Putting the question this way assumes 1) that Communists or persons who proclaim themselves Marxists are ordinarily kept under surveillance in situations that require maximum security for the President and/or 2) that there might be some logical reason why Communists or persons who proclaim themselves Marxists should be kept under surveillance.

Assumption number 2 is absolutely false.

Assumption number 1 is in all probability false. There are undoubtedly persons who believe the lies about the nature of Communism contained in the McCarran Act. But the FBI, in charge of surveillance, *knows* almost first-hand, through its many informers, that Communists reject terrorism and conduct themselves strictly according to democratic norms. It would be completely illogical for the FBI to keep Communists or persons who proclaimed themselves as Marxists under surveillance in order to protect the president.

Cordially,

[fol. 133]

GUS HALL - BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

December 18, 1963

Dear Friend:

We wish to share with you our joy in the partial victory against enforcement of the McCarran Act won yesterday when the U. S. Court of Appeals unanimously reversed the lower court conviction of the Communist Party.

The Court of Appeals held first, that to compel officers of the Party to sign registration documents violates their privilege against self-incrimination; and second, that the government failed to prove that any person other than the officers was available and willing to sign such documents. At the same time, the Court of Appeals affirmed the lower court's registration orders in the "front" cases against the

American Committee for Protection of the Foreign-Born, the Jefferson School and the May Day Committee.

At this moment, we do not know what steps the Government will take next. But we assume that it will not let the matter rest, and will probably appeal the decision to the Supreme Court. We must use this victory to strengthen and intensify our continuing fight.

Nor do we know just how this decision will affect the 37 membership cases, including yours. Two cases were scheduled for hearing before the S.A.C.B. in New York this morning, but last night the Department of Justice called our attorney, Mr. John Abt, and suggested postponement of the hearings for 60 days. As soon as we learn what action they intend to take, we shall inform you without delay.

In the meantime, we are greatly heartened by this decision, not only because it is a good omen, but it provides us with added ammunition for your defense. And it grants us the precious gift of time in which to inform and arouse greater numbers of the American people as to their stake in the struggle against the McCarran Act. It is their many-sided support of the legal defense we conduct that will be decisive in the long run.

We would welcome your questions and comments on this matter.

Sincerely yours,

HALL-DAVIS DEFENSE COMMITTEE

/s/ B. COLÓN
B. Colón, Secretary

[fol. 134]

GUS HALL - BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

December 17, 1963

Mr. John W. Stanford
1118 West Rosewood
San Antonio, Texas

Dear Mr. Stanford:

This is to confirm telegram just sent you, reading as follows:

MERRY CHRISTMAS. COURT OF APPEALS TODAY REVERSED LOWER COURT CONVICTION COMMUNIST PARTY FOR FAILING TO REGISTER UNDER McCARRAN ACT. AFFIRMED REGISTRATION ORDERS IN SEVERAL FRONT CASES. DETAILS LATER.

We wired you the news, although the news services are already carrying it, because the Texas press may not see fit to print it, or may bury it.

Our attorneys do not yet have the text of the decision and we cannot issue any detailed report on it as yet. But what we do know is that the reversal was based on two grounds:

1. That to compel the officers of the Party to sign registration documents violates their privilege against self-incrimination, and
2. That the government failed to prove that any person other than officers was available and willing to sign.

At the same time, the U. S. Court of Appeals affirmed the registration orders in the "front" cases against the American Committee for Protection of Foreign-Born, the Jefferson School and the May Day Committee.

Of course, both decisions can be appealed to the Supreme Court. Also, in the Communist Party case, the Appeals Court stated that regarding the second ground could be taken back to the lower court for re-trial.

How these decisions will affect the membership registration cases and others, the attorneys will not venture to say until they have studied the text of the decisions.

In the meantime, we feel that this is a very important partial victory, and a spur to the many struggles still ahead.

Will write tomorrow in reply to your recent correspondence.

Sincerely,

/s/ B. Colón
B. Colón, Sec'y

[fol. 135]

(Western Union Telegram)

DB594

D NA197 PD 1 EXTRA NEW YORK NY 17 518P EST

JOHN W STANFORD, DLR 630PM

1963 DEC 17 PM 4 55

1118 WEST ROSEWOOD SAN ANTONIO TEX

MERRY CHRISTMAS. COURT OF APPEALS TODAY REVERSED LOWER COURT CONVICTION COMMUNIST PARTY FOR FAILING TO REGISTER UNDER McCARRAN ACT. AFFIRMED REGISTRATION ORDERS IN SEVERAL FRONT CASES. DETAILS LATER.

B COLON SECRETARY

HALL DAVIS DEFENSE COMMITTEE

(26).

[fol. 136]

GUS HALL–BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

December 11, 1963

Mr. John W. Stanford
1118 W. Rosewood
San Antonio, Texas 78201

Dear Mr. Stanford:

This morning we received the two copies of your statement of exceptions to the S.A.C.B. registration order. Now I know why we haven't heard from you for a while—you were busy working up this latest masterpiece. I think the statement is impressive. Am equally impressed by your initiative in drawing up your own statement to be submitted in addition to anything the attorneys will do.

One copy of the Exceptions is in Miss Flynn's hands now; and I am mailing the second copy to Norval in connection with the Texas brochure. Norval is working out a very original approach along these lines: The Story of the Two Johns (Kennedy and Stanford)—developing the point that the whole scheme of things as they are (capitalism, the power structure?!) is so far gone in corruption, deterioration etc. that the same forces that made the assassination possible are the ones that gave rise to the McCarran Act which victimizes you.

Norval is willing to offer his manuscript with the understanding that changes may be necessary taking into account our Committee's policy and your own personal situation.

There will, of course, be ample opportunity for discussion.

What do you think?

By the way, Norval told me today that his little boy has been in the hospital the last two weeks with a kidney infection, which made it difficult to proceed with this project as quickly as he had hoped.

I do hope the barrage of phone threats etc. has tapered off. This must be a very trying time for you and your wife.

Warmest regards.

Sincerely,

/s/ B. Clara Colón
B. Colón, Secretary

Hall-Davis Defense Committee

CC N. Welch

[fol. 137]

GUS HALL - BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

December 4, 1963

Mr. John W. Stanford
1118 W. Rosewood
San Antonio, Texas 78201

Dear Mr. Stanford:

With regard to the Texas brochure, I do agree with you that it is more necessary than ever.

In view of the events of the past two weeks, perhaps the emphasis and some of the content would change. Although the content of the Open Letter is as valid as ever, the central feature should not be the Open Letter. I agree with the suggestions contained in your letter of November 26th, which would serve to relate the essence of your case, and of the whole McCarran Act, to recent events. In sending Mr. Welch a copy of this letter, I shall attach copy of that section of yours of the 26th which refers to the brochure.

Am also in agreement with you on the use of the term "Power Structure." Perhaps Mr. Welch can use his special talents to improve on it.

In my opinion, the addition of 10 new membership cases does not detract, but rather adds to the importance of this particular brochure. The Texas case embodies in sharper form all the issues of importance in all the other membership cases. Perhaps we can make that point, too, in the course of writing the text.

Sincerely yours,

HALL-DAVIS DEFENSE COMMITTEE

/s/ CLARA COLÓN
B. Colón, Secretary

[fol. 138]

No. 1636
12/3/1963

RECEIVED OF .....

Five and ..... 00/100 Dollars

Contribution

GUS HALL–BENJAMIN J. DAVIS
DEFENSE COMMITTEE
ROOM 1225
22 EAST 17TH STREET
NEW YORK 3, N. Y.

$5.00 /s/ COLÓN

(Handwritten notation—Makes total of 218.44 + 1.50)

[fol. 139]

No. 1635
12/3/1963

RECEIVED OF .....

Seventy-Two and ..... 45/100 Dollars

Contribution

/s/ Colón

Gus Hall–Benjamin J. Davis
Defense Committee
Room 1225
22 East 17th Street
New York 3, N. Y.

$72.45

[fol. 140]

1118 W. Rosewood
San Antonio, Texas 78201

November 30, 1963

Gus Hall-Benjamin J. Davis Defense Committee
22 East 17th Street, Room 1225
New York, New York 10003

Attention: Mrs. B. C. Colón

Dear Mrs. Colón:

Thanks for your letters of November 26 and 27. I really appreciated the special delivery. And thanks for sending Sean O'Casey's letter, which was beautiful.

Everyone in this part of the country has doubts about the Dallas police department. Any clippings you'd send on this matter would be superfluous.

I have tear sheets from the newspapers here on Oswald, local stories concerning the beating of his wife, the anti-Soviet book he was writing, people who knew him, etc. I imagine the New York press has carried all of this. If not, let me know; and I could send the sheets to you, to the WORKER, or to someone else you might suggest.

I have the person who sent you the $1.50 dividend check on my mailing list. He had written me after seeing publicity about my case in the local newspapers.

There was a story in last night's late edition of the SAN ANTONIO NEWS saying my police guard had been withdrawn, since I survived the 72 hours, but I did not get to see it. I hear one of the TV stations carried shots of my house, when the threat was first made, but I did not get to see this either.

I enclose my check for $72.45 and an endorsed check for $5.00. A copy of my letter to the persons who sent me the last check is also enclosed.

Cordially,

John W. Stanford

[fol. 141]

GUS HALL - BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

November 26, 1963

Mr. John W. Stanford
1118 W. Rosewood
San Antonio, Texas 78201

Dear Mr. Stanford:

Just received yours of November 21st. Tomorrow I expect we can ship by parcel post 200 of the pamphlets to you. Not certain at this moment whether we can send more. But if we can manage it, will let you know well in advance of your December 13th mailing.

The notation about "legal defense" on your receipts was in response to a request you had made, and I thought it applied to all contributions you forwarded. Thanks for correction. Receipt #1608 enclosed, with appreciation. It did not occur to us to wonder about your personal contribution—we've been so concerned about doing all necessary and possible in your case, recognizing the special difficulties under which you are making a magnificent fight.

During the past gruesome week-end, I couldn't help wondering whether the events in your state had any particular repercussions in your city and whether you had been subjected to any special annoyance.

There has been a positive development in one McCarran Act case—that of Mr. Robel in Seattle. We hear from our attorney, Mr. Abt, that on November 21st, Judge Lindberg ruled to postpone the trial in Mr. Robel's case until a decision is made in the passport case of Miss Flynn and/or decision in the case of Mr. Brown under the Landrum-Griffin Act.

Keep us posted. Best wishes and regards.

HALL-DAVIS DEFENSE COMMITTEE

/s/ B. COLÓN
B. Colón, Secretary

[fol. 142]

GUS HALL–BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

November 14, 1963

Mr. John W. Stanford
1118 West Rosewood
San Antonio, Texas 78201

Dear Mr. Stanford:

We're glad we are able to cover the cost of your latest mailing all at one time, although at first I didn't think we could make it. Check No. 415 for $118.76 enclosed. Your second letter is, I think, a very effective continuation of the fight. Just received copy of Mr. Welch's letters of Nov. 4th and 13th. Am pleased to note that both of you are getting down to brass tacks on the brochure. With all that philosophy swirling over my head, I thought for a while neither one of you cared about getting out the brochure after all. (I'm sure now that I'm in line for being called "anti-theoretical").

Have sent Mr. Welch some material on the McCarran Act—he wants to become thoroughly familiar with the subject. Do you think you can expand the biographical notes somewhat?

The responses you have been getting are most interesting.

Please let us know when you get the S.A.C.B. order resulting from the hearing.

Best wishes and regards.

Cordially,

/s/ Clara Colón
B. Colón, Secretary

[fol. 143]

1118 W. Rosewood
San Antonio, Texas 78201

November 13, 1963

Gus Hall-Benjamin J. Davis Defense Committee
22 East 17th Street, Room 1225
New York, New York 10003

Re: Testimony of Rosalie Urquizo

Attention: Mrs. B. C. Colón

Dear Mrs. Colón:

One of the most interesting aspects of my SACB hearing—to me—was the information brought out in Mr. Forer's cross-examination of Rosalie Urquizo. I have not seen this entire testimony, but the excerpts from the cross-examination that Mr. Forer sent me were included in my November 4 mailing.

The way I understand Mrs. Urquizo's testimony, she was an informer paid by the FBI in 1951 and 1952, then again in 1959 to 1963. In 1951 and 1952 she informed on meetings of the San Antonio chapter of the Unitarian Fellowship for Social Justice. She again informed on the San Antonio UFSJ in 1959 and 1960. She informed on the Communist Party after she joined the CP in April of 1961. During a part of the time she was paid by the FBI she informed on PASO.

Several of my friends who have read this cross-examination—these excerpts—do not have the same interpretation as mine, just stated. A part of the difficulty, I think, arises from the numerous asterisks, which I interpret as omissions. There are even asterisks between the second question and the answer to the second question!

Since these excerpts are going to be used in the brochure that the Hall-Davis Defense Committee is putting out on my case, I think it would be good if some of the omissions could be filled in, at least enough to remove all doubts about the facts Mrs. Urquizo testified to. Perhaps it would also be good to include the question and answer where Mr.

Forer first establishes the fact that Mrs. Urquizo was paid by the FBI in 1951 and 1952. Some people have thought that these dates were a typographical error.

I am sending a copy of this letter to Mr. Forer. Though I know he is very busy, I would like to ask that he take the time to send you this additional information.

In a parenthetical note included with the cross-examination excerpts he sent me, Mr. Forer stated that Urquizo spied on the Unitarians and PASSO (both spellings are correct) [fol. 144] *before* joining the CP. The fact that she spied on PASSO before joining the CP is not brought out in the excerpts from the cross-examination sent to me. If she so testified, I hope that Mr. Forer will furnish you with the relative questions and answers.

What makes this testimony so interesting to me is that I am almost certain that no chapter of UFSJ existed here in San Antonio in 1951-1952 and that Mrs. Urquizo had no connection with the Unitarian church at that time. I cannot state this of my own knowledge, since I was not connected with the church or UFSJ in those years. But persons who were members of the church then cannot remember any UFSJ or any Rosalie Urquizo.

Persons who knew Rosalie Urquizo in 1951-1952 remember her only as being active in union struggles. Could it be that she was paid by the FBI to inform on her fellow-workers? I do not know the truth of the matter. But if she was informing on her fellow-workers, I can understand why she would not want to say so in public, even under oath.

I'm sure all this has no legal bearing on the results of my hearing. But if it could be established that UFSJ did not exist in San Antonio in 1951-1952, I think this would make an interesting footnote to the reprint of excerpts from her testimony in the projected brochure. The footnote would not speculate on whom she was informing on, but would simply state that she could not be informing on UFSJ, which did not exist at that time. Who knows?—perhaps some interested reader might dig up the facts about whom she was informing on.

Perhaps there might be some enterprising newspaper reporter that you know—from the NATIONAL GUARDIAN or from some other paper or magazine—that might want to explore this angle. A few long-distance phone calls would be required to verify the existence or non-existence of UFSJ in 1951-1952. The national office of UFSJ could be contacted. Rev. Napoleon W. Lovely, minister of the Unitarian church here at the time, could be contacted. And if it turned out that UFSJ did not exist, the reporter might even want to contact Mrs. Urquizo for additional information.

The national headquarters of UFSJ is in Washington, D.C., in the same building as the American Friends Service Committee: 245 Second Street, N.E., phone LIncoln 7-0254. Mr. Robert E. Jones is the national Executive Director of UFSJ.

The last address I have for Rev. Napoleon W. Lovely is 600 Third Ave., S.E., Cedar Rapids, Iowa. I wrote him on October 12 concerning Mrs. Urquizo's testimony, but he did not answer my letter.

Mrs. Urquizo lives in San Antonio at 3623 El Paso. She is not listed in the new telephone book, but the previous book gave her phone as GE 2-5832. If this number has been changed, perhaps the correct number could be obtained [fol. 145] from her mother, Mrs. Polanco, who lives at 2102 S. Nueces, CA 4-6955.

I suggested that the national office of UFSJ would be able to verify the existence or non-existence of a San Antonio UFSJ in 1951-1952 on the basis of present UFSJ practice. National UFSJ issues charters to all local UFSJ groups and membership cards to all members. I assume this was also the practice in 1951-1952.

Sincerely yours,

John W. Stanford

/jws

cc: Joseph Forer, Esq.
Mr. Welch

P.S. I think it particularly important to follow up every lead that might help trade-unionists to see how the McCarran Act and the FBI informer system hurt labor. It seems to me that many trade-unionists have a blind spot when it comes to the role of anti-Communism. As you know, I sent my two mailings to all local trade union officials whose names and addresses I could obtain. I have since received three uncomplimentary letters from trade-unionists—the only uncomplimentary letters I received from anyone—and three of my letters returned marked "refused."

[fol. 146]

1118 W. Rosewood
San Antonio, Texas 78201

September 27, 1963

Gus Hall-Benjamin J. Davis Defense Committee
22 East 17th Street, Room 1225
New York 3, New York

Attention: Mrs. B. C. Colón:

Dear Mrs. Colón:

I enclose a copy of a letter I am sending today to Mr. Melvin L. Wulf of the ACLU, a copy of which—along with a copy of this letter—is also being sent to Messrs. Abt and Forer. I hope the attorneys will pardon me for the carbon copies, but I just don't have the time to write separate letters. I will also send along to you with this letter another letter, discussing defense questions that would not be the concern of the attorneys.

As you've noticed from the clippings I've sent, the use of paid FBI informers in a number of organizations has caused something of a furor in the state. It seems to me that the SAN ANTONIO NEWS editorial and the statements by County Commissioner Albert Peña and Congressman Henry B. Gonzalez, as well as the local GI Forum

statement, are reflections of a strong popular resentment against this police-state technique.

The FBI in Washington now states that the informers Lowery and Urquizo were not informing on the organizations, but merely on the activities of Communists in the organizations. And the FBI states that the informers received orders to spy on the GI Forum, NAACP, PASO, Unitarian groups and others not from the FBI—but from the Communists!

I don't know what the reaction is in regards to the other hearings. (From the schedule sent me by Mr. Forer, I would assume that the McCarran Act hearings of Benjamin Dobbs and William C. Taylor have already taken place.) But from my point of view here in Texas, now is the time to hit and hit hard at the FBI informer system. This may be the case nationally. If so, perhaps your committee could influence THE NATION or some other liberal publication to do a story on this question.

I need more factual information to combat the present fairy tale that the FBI is putting out (paragraph 3, above) and that is being confirmed in statements to the press by informer Lowery. If you, or one of the attorneys, could [fol. 147] furnish me with a list of the McCarran Act hearings to date, the names of the informers in each case, and a list of the organizations they spied on, this would be very helpful. It would also be helpful if I had information on the nature of their reports to the FBI. Any other information about the FBI, or books you could refer me to, would also be helpful, of course.

I notice in news stories that certain reports to the FBI were given to Mr. Forer to examine. I would like to know whether I have the right to examine such reports. I would like to know the nature of some of the reports to the FBI about such organizations as PASO, GI Forum, NAACP, etc. If information in some of the reports would refute the statements made by the FBI and referred to above, I would like to have photographs of the reports sent to me. Would there be anything illegal in my releasing information in these reports? I would like to ask that Mr. Forer

[fol. 149]

IN THE 57TH JUDICIAL DISTRICT COURT OF
BEXAR COUNTY, TEXAS

APPLICANT'S EXHIBIT NO. 22

(See opposite) ☞

answer the questions I raise in this paragraph. I am willing to go through whatever channels necessary to get these reports if necessary—a letter to the SACB, etc.

I have heard, but cannot confirm, that the informer Lowery was an officer of the GI Forum, attended state policy-making meetings, or something of the sort. Do the FBI reports reveal this? If so, what were the nature of his activities in the GI Forum?

I think the position taken by the FBI in this case should be exposed and should not go unanswered.

If the FBI is lying in its statements that the organizations mentioned were not reported on, but only the activities of Communists, would there be any way to get a retraction by a responsible official of the FBI, even reopening the hearing if necessary. I don't know what the legal technicalities are, but the core of the matter is that the McCarran Act is aimed against all democratic groups, including the Communists but not limited to them. An exposure of the nature of the FBI spy system helps make this clear to people.

Sincerely,

John W. Stanford, Jr.

[fol. 148]

GUS HALL - BENJAMIN J. DAVIS
DEFENSE COMMITTEE

Room 1225

22 East 17th Street, New York 3, New York

Phone: WA 4-1081

Elizabeth Gurley Flynn
Chairman

Cyril Philip
Treasurer

June 13, 1963

Mr. John W. Stanford
315 Adams
San Antonio 10, Texas

Dear Mr. Stanford:

We are informed that you have been cited by Attorney General Robert Kennedy to appear before the Subversive Activities Control Board under the membership provisions of the "Communist action" section of the McCarran Act.

As you may know, we have been conducting the defense of all victims of the McCarran Act under the "Communist action" section, and stand ready to take up your defense as well.

The procedure we suggest that you follow is that you send to our senior counsel, John J. Abt, the citation you have received together with your written authorization for him to represent you in the proceedings. His address is: Suite 607, 320 Broadway, New York 7, N. Y.

Please feel free to take up with Mr. Abt any special problems you may have in this connection, and let us hear from you. It would help us, in drawing up press releases on your case, to have a short biography.
With warmest personal regards,

Sincerely yours,

Hall-Davis Defense Committee

/s/ Clara Colón
B. C. Colón, Secretary

ALL POINTS OF VIEW

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149

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CUBA

Books in print (excluding travel guides); most recent books or revised editions listed first. Please use code number that follows price in ordering.

THE WAR FOR CUBA, Rowman and Littlefield, to be published Dec., 1961, or Jan. 1962,* 128 p., hardcover $3.95—C110. paperback $1.95—C111.

A pictorial report on the Spanish-American War, compiled from the files of United Press International NewsPictures.

Foner, Philip S., CUBA: FROM SPANISH COLONY TO AMERICAN COLONY TO INDEPENDENT NATION, VOL. I, International Publishers, to be published Nov., 1961,* hardcover $2.75—C112. paperback $1.75—C113.

Dr. Foner, who formerly taught history at the College of the City of New York, is the author of a number of historical works, including the definitive **Life and Writings of Frederick Douglass.** His study of Cuba begins with the discovery of the island by Columbus, and this first volume ends with the annexationist movement in 1845. In preparation are other volumes which bring Cuban history through the 1959 revolution and up to date.

Guevara, Ernesto Che, CHE GUEVARA ON GUERRILLA WARFARE, official Pentagon translation, Frederick A. Praeger, 1961, 119 p., $4.00—C114. translation by Joseph P. Morray, published under title **GUERRILLA WARFARE,** Monthly Review Press, 1961, 127 p., $3.50—C115.

". . . unquestionably destined to become an important historical document . . . . In this short work, the chief planner and administrator of the Cuban economy sums of the experience of the Cuban Revolution and draws the necessary lessons for other peoples suffering under the cruel and corrupt oppression of régimes like Batista's."—**Monthly Review,** April, 1961.

James, Daniel, CUBA, THE FIRST SOVIET SATELLITE IN THE AMERICAS, Hearst Corporation (Avon book), 1961, 320 p., paperback .75—C116.

Written by the author of **Red Design For The Americas—Guatemalan Prelude.** "This book is essentially the fruit of more than fifty interviews conducted with leading exiles from Castro's Cuba . . . . They represent, as far as can be determined, almost all of the important anti-Castro, anti-Batista groups and currents which existed at the time of writing . . . . My sole objective in writing the book was to lay bare, in the best way I could, the strategy and technique by which the Communists conquered Cuba." —Author's Preface.

Matthews, Herbert L., THE CUBAN STORY, George Braziller, 1961, 318 p., $4.50—C117.

The author, Latin American editor for the **New York Times,** tells the Cuban story from its beginnings, through the triumph of the 26th of July movement, the expropriation of American property, the growing tension between Cuba and the United States heightened by Castro's turning to Russia for support, and

*Orders placed before publication will be shipped as soon as books are available.

the mounting opposition by the Cuban exiles leading to the first attempts at invasion to overthrow the Castro regime.

Casuso, Teresa, CUBA AND CASTRO, Random House, 1961, 249 p., **$5.00—C118.**

Dr. Casuso was Cuba's ambassador to the United Nations until she resigned in October, 1960, and took asylum in the U.S. She writes that the Cuban Revolution was handed to the Communists ". . . on a silver platter by a man with a disordered mind, a man fortunate in war but inept at peace, an absolutist obsessed with power and personal glory."—Chapter I.

Pflaum, Irving Peter, TRAGIC ISLAND: HOW COMMUNISM CAME TO CUBA, Prentice-Hall, 1961, 196 p., **$3.95—C119.** OUT OF PRINT

"The author is . . . foreign correspondent for the Chicago **Sun-Times** . . . . Mr. Pflaum's central theme is that within the Cuban revolution itself and the cold war milieu in which the world exists were forces inevitably destined to convert Castro's movement into a Sino-Soviet weapon against the United States." —**Publishers' Weekly,** 6 12 61.

Weyl, Nathaniel, RED STAR OVER CUBA, Devin-Adair, second revised printing, April, 1961, 248 p., hardcover **$4.50—C120.** paperback, further revised, published by Macfadden Publications (Hillman book), July, 1961, 224 p., .50—C121.

The author has served as Latin American research chief for the Board of Governors, Federal Reserve System. His point of view may be judged from this quotation from his new opening chapter, written June 22, 1961: "The failure of American policy toward Cuba was largely due to the activities of appeasement-minded officials in the State Department, Castro apologists in Congress and an influential clique of foreign correspondents who systematically misrepresented the Communist dictatorship in Cuba as a high-minded experiment in economic democracy and social justice."

Taber, Robert, M-26, THE BIOGRAPHY OF A REVOLUTION, Lyle Stuart, 1961, 348 p., **$4.95—C122.**

The author, Executive Secretary of the Fair Play for Cuba Committee, was a CBS newsman in Cuba in the latter part of the Revolution. "A detailed military history of the six years of the Cuban revolution, the 'Movimiento 26' that began July 26, 1953 . . . Fidel Castro, the author says, is neither a Communist nor the tool of anyone."—**Publishers' Weekly,** 6 5 61.

Miller, Warren, 90 MILES FROM HOME, Little Brown, 1961, 279 p., hardcover **$3.95—C123.** paperback published by Fawcett Publications (Crest book), 1961, 256 p., .50—C124.

The author, an American novelist who last returned from Cuba the day before the U.S. broke off diplomatic relations, visited and interviewed Cubans of all attitudes toward the Revolution—enthusiastic (the majority), lukewarm, and opposed—and he presents their words and feelings with understanding and humor. He talked with "the man in the street," Cuban government officials, writers, artists, and with counterrevolutionaries in Florida. The book contains the first translations into English of the anti-imperialist songs of the popular Cuban folksinger, Carlos Puebla.

Sartre, Jean-Paul, SARTRE ON CUBA, Ballantine Books, 1961, 160 p., paperback .50—C125.

An analysis of the background, program, and ideology of the Cuban Revolution by the noted French existentialist philosopher. The author states that during his visit to Cuba last year he came to consider Fidel Castro one of his few friends.

Youngblood, Jack, and Robin Moore, THE DEVIL TO PAY, Coward-McCann, 1961, 320 p., $4.50—C126.

"The recent years of Jack Youngblood, a completely amoral flier and gunrunner from Arkansas who worked for Fidel Castro, though, by his account, deploring Castro's Communist connections. It is hard to know how much of this unsavory account of murder, kidnapping, and double-crossing to believe." —**Publishers' Weekly,** 3/16/61.

Smith, Robert F., THE UNITED STATES AND CUBA: BUSINESS AND DIPLOMACY, 1917-1960, Bookman Associates, 1961, 256 p., $5.00—C127.

". . . will probably become a standard source of information on U.S.-Cuban relations. Dr. Smith, of Texas Lutheran College, thoroughly documents the interaction of United States business interests, the State Department and Cuba over the years. He made considerable use of U.S. national archieves for the study. Dr. Smith believes the inability and unwillingness of the U.S. government to support economic and social change in many poor countries stem largely from the pressure of United States business to maintain the **status quo.**"—Frank L. Cinquemani, **Library Journal,** 2/15/61.

Roca, Blas, THE CUBAN REVOLUTION, New Century Publishers, 1961, 127 p., hardcover $2.50—C128, paperback $1.25—C129.

"This book contains the full text of the main political report of Blas Roca, General Secretary, to the Eighth National Congress of the Popular Socialist Party of Cuba, held in Havana, in August, 1960."—Publisher's note "To the Reader."

Huberman, Leo, and Paul M. Sweezy, CUBA, ANATOMY OF A REVOLUTION, Monthly Review Press, second edition with new material added, 1961, 208 p., hardcover $3.50—C130, paperback $1.75—C131.

The authors are editors of the magazine **Monthly Review.** ". . . the only extended study yet made of the Cuban Revolution as a revolution, and it is done by two professionals—left-wing socialists who apply the 'scientific' measuring rods of their own brand of Marxism."—Herbert L. Matthews, **The Annals of the American Academy of Political and Social Science,** Nov., 1960. "Most exhaustive study of the Revolution in English; pro-Castro."—Sue Anderson, **Hispanic American Report,** published June, 1961.

North, Joseph, CUBA: HOPE OF A HEMISPHERE, International Publishers, 1961, 95 p., hardcover $2.00 —C132, paperback .95—C133.

The author, foreign editor of **The Worker,** made two visits to Cuba in 1959-1960. "These pages set as their purpose the need to prevent any open armed or concealed assault on this gallant people."—Foreword.

Mills, C. Wright, LISTEN, YANKEE, Ballantine Books, 1960, 192 p., paperback .50—C134.

The author, Professor of Sociology at Columbia University, reports the Cuban Revolution from the

All Points of View is a new kind of book service. We believe that the truth about any subject cannot be found by examining only one point of view or isolated facts. In view of the extreme complexity of social life, one who desires to approach as near as possible to the truth must take into consideration all basic facts and all points of view.

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Cubans' point of view. ". . . though we may not like these expressions from the Cuban revolutionaries, I think we should read them with care, because they affect our whole Latin American policy." —Mrs. Eleanor Roosevelt, **New York Post**, 12 14 60.

Phillips, Ruby Hart, CUBA, ISLAND OF PARADOX, McDowell, Obolensky, 1959, 434 p., $4.95—C135.

The author was the **New York Times** correspondent at Havana from 1937, when she succeeded her late husband, to 1961. The book covers the period from Batista's rise to power through the Cuban Revolution. "For an understanding of events in 20th-century Cuba . . . no single volume could be more useful . . . ." **Foreign Journal**, 9 1 59.

Dubois, Jules, FIDEL CASTRO: REBEL—LIBERATOR OR DICTATOR?, Bobbs Merrill, 1959, 389 p., $5.00—C136.

The author, Latin American correspondent for the **Chicago Tribune**, personally covered a great deal of the Cuban Revolution. "The book is full of . . . names, dates, and truthful, unabridged translations of many of the letters, radio broadcasts, speeches, and manifestos that issued from the prolific pen of Fidel Castro." **Saturday Review**, 4 4 59.

Budega Cuzas, Jesus, A STATEMENT OF THE LAWS OF CUBA IN MATTERS AFFECTING BUSINESS, Pan American Union, second edition, revised and enlarged, 1958, 333 p., paperback $5.00—C137.

A statement of the laws that obtained under the Batista regime, written by a Cuban attorney.

Wallich, Henry Christopher, MONETARY PROBLEMS OF AN EXPORT ECONOMY: THE CUBAN EXPERIENCE, 1914-1947, Harvard University Press, 1950, 357 p., $6.00—C138.

The author was chief of the Foreign Research Division of the Federal Reserve Bank of New York, and before writing this book he had worked closely for some years with the Cuban Finance Ministry and the Central Bank. ". . . a scholarly contribution to the economic history of Cuba . . . ." F. W. Fetter, **Journal of Political Economy**, June, 1951.

Nelson, Lowry, RURAL CUBA, University of Minnesota Press, 1950, 285 p., $3.50—C139.

The author, now Professor of Sociology at the University of Florida, studied the problems of rural Cuba for a year spent there as rural sociologist for the U.S. Department of State. He reports his findings on population, social caste, family relations, education, recreation, and means of livelihood.

Manach, Jorge. MARTI — APOSTLE OF FREEDOM. Devin-Adair, 1950. 363 p., **$4.50** —C140.

The author is a Cuban writer and educator and a former Secretary of State of his country. ". . . excellent translation of the ablest biography of the Cuban liberator."—**New York Herald Tribune**, 6 4 50. The Cuban Revolution of today draws much of its inspiration from the thought of Marti, the outstanding hero of the revolution for independence from Spain.

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THE CASE OF FRANCISCO MOLINA—POLITICAL PRISONER. The Committee to Defend Francisco Molina, 1961. 15 p., .25—C141.

A PRESS DIGEST ON UNITED STATES-CUBA RELATIONS, 1957-1961, compiled by a group of Harvard graduate students, 1961. 92 p. mimeographed. **$1.00** —C142.

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Baran, Paul A., REFLECTIONS OF THE CUBAN REVOLUTION. Monthly Review Press, second edition, with new material added, June, 1961. 45 p., .50 —C143.

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Ring, Harry, HOW CUBA UPROOTED RACE DISCRIMINATION. Pioneer Publishers, June, 1961. 15 p., .15—C147.

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Allen, James S., THE LESSONS OF CUBA. New Century Publishers, May, 1961. 31 p., .15—C151.

Dellinger, Dave, AMERICA'S LOST PLANTATION. Liberation, 1961. 56 p., .50—C152.

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HISTORY WILL ABSOLVE ME (10 16 53), Lyle Stuart, 1961, 79 p., **$1.00**—C159.

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SUPREME COURT OF THE UNITED STATES

No. 869—October Term, 1963

JOHN W. STANFORD, JR., Petitioner,

vs.

TEXAS.

ORDER ALLOWING CERTIORARI—June 22, 1964

The petition herein for a writ of certiorari to the 57th Judicial District Court of the State of Texas is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U.S.
FILED
FEB 26 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted] 40

JOHN W. STANFORD, JR.,

Petitioner,

—v.—

STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

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IN THE

Supreme Court of the United States

October Term, 1963

No. .....

JOHN W. STANFORD, JR.,

Petitioner,

—v.—

STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

John W. Stanford, Jr., prays that a writ of certiorari issue to review the judgment of the 57th Judicial District Court of Bexar County, Texas, entered in the above-entitled case on January 20, 1964.

Opinion Below

No opinion was rendered by the court below.

Jurisdiction

The judgment of the court below was entered on January 20, 1964 (T.[1] 12; Appendix A, *infra*, pp. 19-20). A timely motion for a new trial, filed on January 29, 1964 (T. 16),

[1] "T" refers to the record of the proceedings in the court below which is entitled "Transcript" on its cover.

was overruled on January 29, 1964 (T. 20). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3) because rights are claimed under the Constitution of the United States.

Questions Presented

1. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the Fourth and Fourteenth Amendments to the United States Constitution, because:

   a) There was no probable cause for issuance of the warrant;

   b) There was no specification of the crime charged;

   c) The things to be seized were not particularly described.

2. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, because petitioner was compelled thereby to testify against himself.

3. Whether the seizure of petitioner's books, papers, records and letters, and the search warrant which purported to authorize the seizure, violated the First and Fourteenth Amendments to the United States Constitution because petitioner was thereby deprived of freedom of speech, freedom of the press, and freedom of association.

4. Whether Articles 6889-3 and 6889-3A, Revised Civil Statutes of Texas, are superseded by federal legislation.

Constitutional Provisions and Statutes Involved

The constitutional provisions involved are Article VI, the First Amendment, the Fourth Amendment, the Fifth Amendment, and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The statutory provisions involved are Article 6889-3, entitled "The Texas Communist Control Law" (hereafter called the "Control Law"), and Article 6889-3A, entitled "An Act for the Suppression of Communist Party and Related Organizations" (hereafter referred to as the "Suppression Act"), of the Revised Civil Statutes of Texas. They are printed in Appendix B, *infra*, pp. 21-32.

Statement of the Case

On December 26, 1963, petitioner was served with a report and order of the Subversive Activities Control Board calling for his registration as a member of the Communist Party pursuant to Section 8 of the Subversive Activities Control Act of 1950, 50 U. S. C., 787. (Tr.[2] 2; App. Ex. 1). On December 27, 1963, James E. Barlow, Criminal District Attorney, Bexar County, Texas, made application (App. Ex. 12; Appendix C, *infra*, pp. 33-34) in the District Court, 57th Judicial District, Bexar County, for a search warrant "in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas".[3] After reciting that he had good reason to believe and did believe that petitioner's premises was "a place where books, records, pamphlets, cards, receipts, lists, memoranda, pic-

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[2] "Tr" refers to the transcript of the hearing in the court below which is entitled "Statements of facts" on its cover.

[3] Section 9 of Article 6889-3, the Control Law, does not relate to the issuance of search warrants. It therefore must be assumed that the reference is simply to Section 9 of Article 6889-3A, the Suppression Act.

tures, recordings and other written instruments [hereafter called "books, [etc.]"] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A," the application of Mr. Barlow stated that his belief was founded on the following information:

> "That this officer has received information from two credible persons that the party named above has such books and records in his possession which are books and records of the Communist Party [,] including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th December, 1963 of pro-Communist material."

The application attached an affidavit (App. Ex. 11; Appendix D, *infra*, pp. 35-36) signed by two persons, both Assistant Attorney Generals of the State of Texas. The affidavit recited that the beliefs of the affiants in the existence on petitioner's property of

> "books [etc.] concerning the Communist Party of Texas and the operations of the Communist Party in Texas . . . unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas"

were founded on the following information:

> "Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party."

The warrant (App. Ex. 13; Appendix E, *infra*, pp. 37-38), issued by Solomon Casseb, Jr., Judge, 57th Judicial District, Bexar County, after reciting that the "application [is] . . . in accordance with law," and the allegations made regarding existence of the "books [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas," and their unlawful possession and use in violation of the Control Law and Suppression Act at the petitioner's home, ordered the executing officers

> "to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of [the Control Law and the Suppression Act], and to take possession of same."

The warrant was executed on December 27, 1963, in the course of a five-hour search of petitioner's residence. About two thousand pieces of literature, books, pamphlets, and other publications, were seized. Also taken were petitioner's private papers, including correspondence with his attorney (App. Ex. 14) and with the committee supporting his defense against the charges of the Subversive Activities Control Board (App. Ex. 15), personal letters, certificate of title to his auto, his marriage certificate, and medical and furniture bills (Tr. 46-51). An inventory of all the material seized was attached to the return of the warrant (App. Ex. 13).[4]

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[4] Illustrative of the material among the fourteen boxes of books seized (Tr. 20) is the following alphabetical list of persons whose written works were a part of petitioner's library: Justice Hugo L. Black, Earl Browder, Fidel Castro, Benjamin Davis, Theodore Draper, Che Guevara, Pope John XXIII, N. S. Kruschev, V. I. Lenin, Karl Marx and Friedrich Engels, and Jean-Paul Sartre. Some of the books were from petitioner's private library and some were inventory of his book-selling business conducted under the name of "All Points of View" (Tr. 29-30; App. Ex. 6). One of the items seized and listed in the return (1 box cardboard 5" x 4" x 10" containing index cards containing addresses) contained the mailing list assembled by petitioner in his book business.

On January 9, 1964, petitioner made application before Judge Casseb for an order to "quash, set aside, and hold for naught" the warrant, and for return of all items seized under it (T. 1-7). Judge Casseb ordered a hearing regarding the search warrant (T. 8), which was had on January 17, 1964.

At the hearing, Mr. Lonny Zweiner, one of the signers of the affidavit upon which the warrant issued, upon objection by the State's Counsel, was not permitted to answer a question about what specified phase or phases of the acts had been violated, through unlawful possession or use of the seized material, or otherwise (Tr. 69-70). Mr. Zweiner continued to describe his information sources only as "credible persons" who "described" the literature for which the search was made as being "communistic literature, which follows the communist line and is designed to forward the aims and purposes of the Communist Party" (Tr. 71).

The hearing also established that Mr. V. Murray Jordon, the other affiant, and the officer who supervised the selection of the materials taken pursuant to the warrant (Tr. 66, 68), had no qualifications for determining what would be "pro-Communist" literature. Mr. Jordan was a 1959 graduate of the University of Texas Law School. He had been a finance major as an undergraduate. He had not studied communism either in college or law school (Tr. 73-75). He had simply looked at "various samples of . . . communist party literature . . . " (Tr. 77).

Mr. Jordan's unidentified informants told him they had received "communist party literature" from Mr. Stanford at a Communist Party meeting (Tr. 77), and that the distributed "material" would be the subject of discussion led by Mr. Stanford, "that discussion about an article from these pamphlets and this was stated to be the Communist

Party line or leaf (sic) of the Communist Party line" (Tr. 79). Mr. Jordon (Tr. 80-81), and Mr. Zweiner (Tr. 66-68) believed the warrant ordered only the seizure of books which were sympathetic to the Communist Party "line".

On January 20, 1964, the court below denied petitioner's application for the return of his books and papers (T. 12). On January 29, 1964 petitioner moved to set aside the judgment and to obtain a new trial regarding these matters, setting forth all the grounds which had been previously asserted as foundation for nullifying the warrant and ordering the return of the materials taken under it, and alleging the judgment was contrary to the law and the evidence (T. 16-19). On the same date the court overruled the motion (T. 20).

Under Texas law, as established in *Ex parte Wolfson*, 127 Cr. R. 277, 75 S. W. 2d 440 (Tex. Ct. of Crim. App. 1934), there is no appeal from an order entered upon a hearing before the magistrate upon return of the search warrant, or any finding by such magistrate that there was good ground for issuance of the warrant. The parties have stipulated that the judgment of the court below is final and not appealable or otherwise reviewable under Texas law (T. 14). See *Thompson* v. *City of Louisville*, 362 U. S. 199, 202-203 (1960).

The federal questions presented were raised on the Application to Determine Legality of Search Warrant (T. 1-7) and reiterated on the Motion for a New Trial (T. 16-19).

Reasons for Granting the Writ

In this singular case, the State of Texas has asserted the power to lay siege to a man's home for five hours; rummage freely through his books, records and papers;

seize and remove publications capriciously deemed to be "pro-Communist"; and seize and remove his private papers, including privileged correspondence with his attorneys—all for the purpose of discovering whether any crimes have lately been committed. The intrusion is allegedly authorized by two Texas statutes which clearly trench upon the freedoms of speech, press and association, rights which are protected against abridgement or invasion by the Constitution. As if those acts themselves were not sufficiently oppressive, the State officials, under the pretense of acting lawfully, proceeded upon the basis of a search warrant which violated every standard for the protection of privacy which this Court has enunciated, and a few not heretofore anticipated.

I.

a) The Warrant Was Issued Without Probable Cause.

The search warrant in this case was issued without probable cause, in violation of the Fourth Amendment, which applies equally to the States and the United States.[3]

> "Under the Fourth Amendment an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough." *Nathanson* v. *U. S.*, 290 U. S. 41, 47 (1933).

"Probable cause exists if the facts and circumstances . . . warrant a prudent man in believing that the offense has been committed." *Henry* v. *U. S.*, 361 U. S. 98, 102 (1959).

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[3] *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Ker* v. *California*, 374 U. S. 23 (1963).

The "facts" which the affidavit sets forth in support of the affiants' belief that petitioner had committed a crime are twofold: first, "information" of "recent mailings by Stanford" of "pro-Communist material"; and, second, "other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party."

Both of the statements are hearsay (Tr. 74). While probable cause can be established by hearsay evidence, the affidavit must show a "substantial basis for crediting the hearsay . . . presented." *Jones* v. *United States*, 362 U. S. 257, 269 (1960). There is no such showing here. The first of these two pieces of information offered in support of the affiants' beliefs depends entirely upon the efficacy of the assertion that the material mailed was "pro-Communist." It is difficult to imagine anything more conclusionary and lacking the quality of an assertion of fact sufficient to meet the standard of the Fourth Amendment. If one untangles these words, the affidavit, in attempting to present facts and circumstances, says that the affiants have been told by completely unidentified and perhaps completely untrustworthy sources that petitioner, more than two weeks before the issuance of the warrant, had mailed materials which these sources "identified as pro-Communist." The second "fact or circumstance," somewhat more clearly perhaps, shows that sources of no greater established trustworthiness had told the affiants that petitioner had in his possession books and records of the Texas Communist Party.[6]

When one considers the dearth of factual allegations, as opposed to conclusions, and the absence of qualifications of the affiants, as established at the hearing, it is doubtful

[6] Cf. *Johnson* v. *United States*, 333 U. S. 10 (1948); *Jones* v. *United States*, *supra*.

if the statements in support of their beliefs would have been sufficient to establish probable cause, even if made on personal knowledge. But having its origin in unidentified and unqualified persons, the basis for the issuance of the warrant resembles but a caricature of an insufficient showing of probable cause. Cf. *Wong Sun* v. *United States*, 371 U. S. 471, 481-82 (1963); *Abel* v. *United States*, 362 U. S. 217, 246 (1960) (dissenting opinion).

b) The Warrant Did Not Specify the Crime Charged.

A search warrant cannot be issued unless the applicant indicates that some *specific* crime has probably been committed by the party who is to be subjected to an invasion of privacy and liberty. Thus far, normal procedures for the issuance of such a warrant have obviated the necessity for this Court explicitly to announce this. It is, however, implicit in many decisions of this and other courts in relating probable cause to the showing of the likelihood that "*the* offense has been committed." *Carroll* v. *United States*, 267 U. S. 132, 161 (1925); *Dumbra* v. *United States*, 268 U. S. 435, 439 (1925); *Henry* v. *United States*, 361 U. S. 98, 102 (1959).

The Suppression Act makes all of the following illegal: commission of an act intended to overthrow [etc.] the United States or Texas; advocacy or teaching such doctrine; conspiracy to commit such acts or teach such doctrines; support of or membership in any organization which engages in or advocates such acts. Consistent with the terms of the statute (assuming, *arguendo*, its constitutionality) a warrant might issue under Section 9 for search and seizure to prove any of these crimes. But these crimes are each quite separate, and the application and order must indicate the offense which has probably been committed. Section 9 so required. The application and warrant, how-

ever, failed to specify the violation. But it did not stop there. It sought not only to authorize search for and seizure of evidence of this cluster of crimes, but for other purposes as well: perhaps to prove the crime of failing to register as a Communist, perhaps to enforce the other sanctions of the Control Law (prohibition of candidacy for office, or termination of state employment).

While such clustering of the crimes for which evidence is being sought is unconstitutional even if each of the crimes for which the evidence is being gathered is a properly defined crime capable of withstanding constitutional challenge, when, as here, the provisions of the statute clearly trench upon constitutionally protected activity, this bundling of statutes for which evidence regarding violations is being sought becomes all the more objectionable.

c) The Warrant Did Not Particularly Describe the Things to Be Seized.'

The Fourth Amendment requires that search warrants shall particularly describe the things to be seized.

> "[This] requirement . . . prevents the seizure of one thing under a warrant describing another. As to what is to be taken, *nothing is left to the discretion of the officer executing the warrant.*" *Marron v. United States*, 275 U. S. 192, 196 (1927). (Emphasis added.)

Measuring the warrant here by the express language of the Amendment and this expression of the policy behind that requirement establishes its deficiencies. The warrant ordered seizure of "books, [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas [which] are unlawfully possessed and used in violation of [the Control Law and the Suppression Act]."

In *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961), this Court reversed an order denying a motion to quash search warrants which described the materials to be seized only in the language of the statute and which thus permitted those executing the warrants to exercise individual judgment about what violated the statute. This Court said that, "Procedures which sweep so broadly and with so little discrimination are obviously deficient in techniques required by the Due Process Clause of the Fourteenth Amendment to prevent erosion of the constitutional guarantees." Id. at 733.

The officials here wielded a general search warrant which invested them with carte blanche to seize whatever took their fancy. But, as Mr. Justice Brennan pointed out in *Marcus* v. *Property Search Warrant*, *supra*, at 729:

> "The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression."

II.

The warrant here was issued under Section 9 on the Suppression Act, which provides for the seizure of "books, [etc.] *showing* that a person or organization is violating or has violated any of the provisions of this Act." (Emphasis added.) The provision is unconstitutional on its face, for it authorized issuance of the warrant for a purpose prohibited by the Fourth and Fifth Amendments.

A search warrant cannot be used solely to gather evidence. "In this regard the Fourth and Fifth Amendments run almost into each other." *Boyd* v. *United States*, 116 U. S. 616, 630 (1886); *Gouled* v. *United States*, 255 U. S.

298 (1921). Papers and documents which afford evidence that a felony has been committed, but which are not the means of committing it, are immune from seizure. *United States* v. *Lefkowitz*, 285 U. S. 452 (1932).[7]

The pernicious terms of Section 9 of the Texas statute, authorizing search and seizure of materials *showing* that a person or organization is violating or has violated any provision of the Act, become the more wicked when the material which it authorizes to be seized includes publications. While State officials may long for the power to seize books that have not lost the protection of the First Amendment the Constitution forbids it, for if their possession is not unlawful, that is, if they are neither contraband, nor the fruits or implements of crime, they cannot be more than evidence of crime. Though there are nations where possession or sale of publications unpalatable to the government is deemed criminal, the United States is not one of them, nor was Texas until this case arose.

III.

There is no dearth of authority for the proposition that States may not make political opinion illegal, however unpopular those opinions may be. *DeJonge* v. *Oregon*, 299 U. S. 353 (1937), is perhaps the most appropriate case in point.[8] Publications, the most commonly used means of

[7] See 129 A. L. R. 1296 (1940).

[8] See too *Abrams* v. *United States*, 250 U. S. 616 (1919) (dissenting opinion); *Whitney* v. *California*, 274 U. S. 357 (1927) (concurring opinion); *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Herndon* v. *Lowry*, 301 U. S. 242 (1937); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Hague* v. *CIO*, 307 U. S. 496 (1939); *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *West Va. Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943); *Thomas* v. *Collins*, 323 U. S. 516 (1945);

exercising the right of free speech, cannot be made the subject of official sanction unless, by reason of the nature of the books themselves, the possession, giving, selling or issuing of them would be a crime. Only then would such publications lose the protection of the First Amendment and be properly seizable. "Obscene" books are the only such class of publications. *Roth* v. *United States*, 354 U. S. 476 (1957).

This Court has condemned as inadequate procedures affording the owner of "obscene" books more protection than petitioner had here. *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961), declared that if publications are to be seized, the State, because of the nexus between books and the exercise of free speech, must provide a method having greater safeguards for individual liberty than might be required if the seizure were of arms, ammunition, gambling paraphernalia, or equipment for looting. As was stated in *Speiser* v. *Randall*, 357 U. S. 513 (1958), "The more important the rights at stake the more important must be procedural safeguards surrounding those rights . . . When the State undertakes to restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights—rights which we value most highly and which are essential to the working of a free society." At 520-521. See also *Smith* v. *California*, 361 U. S. 147 (1959).

Terminiello v. *Chicago*, 337 U. S. 1 (1949); *Talley* v. *California*, 362 U. S. 60 (1960); *Shelton* v. *Tucker*, 364 U. S. 479 (1960); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293 (1961); *Cramp* v. *Bd. of Public Instruction*, 368 U. S. 278 (1961); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539 (1963); *Wright* v. *Georgia*, 373 U. S. 284 (1963).

The seizure here, and the statutes under which it was performed, also violate the proscription upon State activity imposed by the Fourteenth Amendment in protection of the First Amendment right to freedom of association. *NAACP* v. *Alabama*, 357 U. S. 449 (1958). Among the items taken by the Texas officials were the mailing lists that petitioner used in his book business. This extraction from petitioner, without his consent, of the names of those to whom petitioner seeks to sell books, concerns information regarding lawful conduct which the State may not extract through this procedure. Even in *Uphaus* v. *Wyman*, 360 U. S. 72 (1959), in which a majority of this Court, in a unique decision, permitted a State to extract by lawful procedures information regarding associations in and of themselves completely lawful, it was explicitly stated that such power rested in the State because a statute required the maintenance of records, available to public inspection, which contained the information sought. In the instant case, the State does not (and, we trust, could not) require the records and lists which were taken from defendant to be maintained. Further, in the *Uphaus* case, the majority opinion suggests that the investigative power of the State legislature is broader than the power of the State in criminal proceedings.

This seizure affects others than just petitioner. The fact that Texas takes no direct action against the others does not end inquiry into the effect of the seizure of the mailing lists of this book distributor. *NAACP* v. *Alabama*, *supra*.

> "Once the Government can demand of a publisher the names of the purchasers of his publication the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of

> criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular, what the powers-that-be dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged. The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in dispute in the orthodox school of thought will be suspect and subject to investigation. The press and its readers will pay a heavy price in harassment. But that will be minor in comparison with the menace of the shadow which government will cast over literature that does not follow the dominant party line." *United States* v. *Rumely*, 345 U. S. 41, 57-58 (1953) (concurring opinion).

IV.

In *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1956), this Court held that state criminal statutes directed against sedition had been pre-empted under Art. VI of the Constitution by the Smith Act, 18 U. S. C. §2385. Subsequently, *Uphaus* v. *Wyman*, 360 U. S. 72 (1959), held that the States were not debarred from investigating in the area of sedition solely against a state—the precise factual question before the Court. As a result of the two decisions, there is considerable doubt whether state statutes which sweep as broadly as the Control Law and the Suppression Act can stand consistently with the Supremacy Clause, in the light particularly of the Smith Act, the Subversive Activities Control Act of 1950, 50 U. S. C. §781 et seq., and the Communist Control Act of 1954, 50 U. S. C. §841 et seq.

Nelson articulated a threefold test of supersession: (1) whether the scheme of federal regulation is so pervasive

that it can reasonably be inferred that Congress left no room for the states to legislate. 350 U. S. at 502; (2) whether the state statutes concern a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. 350 U. S. at 504; (3) whether enforcement of the state laws presented a serious danger of conflict with the administration of the federal program. 350 U. S. at 505. These three criteria set against the statutes here and the pending Subversive Activities Control Board proceedings against petitioner, compel the conclusion that the Texas laws have been superseded.

CONCLUSION

For the reasons set forth above, the petition should be granted.

Respectfully submitted,

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February 26, 1964

APPENDIX A

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

No. F-158,480

IN RE: JOHN WILLIAM STANFORD, JR.
SEARCH WARRANT

JUDGMENT

On the 17th day of January, 1964, came on to be heard the Application of the Petitioner, John W. Stanford, Jr., to Determine the Legality of the Search Warrant issued in this cause, and the Petitioner appeared in person and by and through an Attorney representing the American Civil Liberties Union and the State appeared by and through the Criminal District Attorney of Bexar County, Texas, and the representatives of the Attorney General of Texas, and the Court having considered the pleadings and the evidence in the cause, and this Court sitting as a magistrate, as it has jurisdiction to do so under Title 6 of the Code of Criminal Procedure of Texas,

DENIES the relief prayed for by the Petitioner herein. Costs are taxed to Petitioner.

Signed this the 20th day of January, 1964.

SOLOMON CASSEB
District Judge
57th Judicial District of
Bexar County, Texas

JAMES E. BARLOW
Criminal District Attorney
Bexar County, Texas

Approved as to form only:

MAURY MAVERICK, JR.
Attorney for
American Civil Liberties Union

APPENDIX B

COMMUNISM

ART. 6889-3. TEXAS COMMUNIST CONTROL LAW

Communist defined

Section 1. A "Communist" is a person who:

(A) Is a member of the Communist Party, notwithstanding the fact that he may not pay dues to, or hold a card in, said Party; or

(B) Knowingly contributes funds or any character of property to the Communist Party; or

(C) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence; or

(D) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites.

Definition of Communist Party

Sec. 2. The "Communist Party" is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which

in any manner advocates, or acts to further, the world Communist movement.

Definition of Communist Front Organization

Sec. 3. A "Communist Front Organization" is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement.

Registration

Sec. 4. (A) Each person remaining in this State for as many as five (5) consecutive days after the effective date of this Statute, who is a Communist or is knowingly a member of a Communist Front Organization, shall register with the Department of Public Safety of the State of Texas on or before the fifth consecutive day that such person remains in this State, and so long as he remains in this State shall reregister annually with said Department between the first and fifteenth days of January.

(B) Such registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the State of Texas, sources of income, place of birth, places of former residence, and features of identification, including fingerprints, of the registrant; organizations of which registrant is a member; names of persons known by registrant to be Communists or members of any Communist Front Organization; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute.

(C) Each and every officer of the Communist Party and each and every officer of Communist Front Organizations,

knowing said Organizations to be Communist Front Organizations, shall register or cause to be registered said Party or Organizations with the Department of Public Safety, if said Party or Organizations have any members who reside, permanently or for a period of time more than thirty (30) days, in the State of Texas. Such registration shall be under oath and shall include the name of the organization, the location of its principal office and of its offices and meeting places in the State of Texas; the names, real and assumed, of its officers; the names, real and assumed, of its members in the State of Texas and of any person who has attended its meetings in the State of Texas; a financial statement reflecting receipts and disbursements and by whom and to whom paid; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute. Such registration shall be made within thirty (30) days after the effective date of this Statute, and thereafter at such intervals as are directed by the Department of Public Safety.

(D) Failure to register as herein required, or the making of any registration which contains any material false statement or omission, shall constitute a felony and shall be punishable by a fine of not less than One Thousand Dollars ($1,000) or more than Ten Thousand Dollars ($10,000), or by imprisonment of not less than two (2) or more than ten (10) years, or by both.

(E) Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the records shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this State, of the United States or of any State or Territory of the United States. At the discretion of the Department of Public Safety, such records may also be open for inspection by the general public or by any member thereof.

Sabotage

Sec. 5. It shall be a felony, punishable by a term in the penitentiary of not less than two (2) nor more than twenty (20) years for any person, with the intent to injure the United States, the State of Texas, or any facilities or property used for national defense, to sabotage or destroy, or to attempt to sabotage or destroy, any property, facility or service that is being used or is to be used in connection with national defense. Should any loss of life occur by reason of such sabotage or destruction, or by reason of any attempted sabotage or destruction of such character, the person committing or attempting to commit same shall be guilty of murder with malice aforethought and shall be punished by death, or by confinement in the penitentiary for life or for any term of years not less than two (2). The word "sabotage" as used herein means the wilful and malicious infliction of physical damage or injury to property. The penalty herein provided shall be cumulative of all other penalties which might be imposed by virtue of the fact that the acts constituting an offense under this Statute also constitute separate offenses under other laws of this State.

Elections

Sec. 6. The name of any Communist or of any nominee of the Communist Party shall not be printed upon any ballot used in any primary or general election in this State or in any political subdivision thereof.

Public office

Sec. 7. No person may hold any nonelective position, job or office for the State of Texas, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the State of Texas, or of any political subdivision there-

of, where reasonable grounds exist, on all of the evidence, for the employer or other superior of such person to believe that such person is a Communist or a knowing member of a Communist Front Organization.

Enforcement

Sec. 8. The Attorney General of the State of Texas, all District and County Attorneys, the Department of Public Safety, and all law enforcement officers of this State shall each be charged with the duty of enforcing the provisions of this Statute.

Partial unconstitutionality

Sec. 9. If any section, subparagraph, sentence, phrase, part or application of this Statute shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions hereof, and the Legislature here declares that it would have enacted such remaining portions notwithstanding any holding of unconstitutionality with respect to any other portions of this Statute.

Cumulative character

Sec. 10. This Statute is cumulative of all existing laws and does not repeal any such laws.

Short title

Sec. 11. This Act may be cited as the "Texas Communist Control Law." Acts 1951, 52nd Leg., p. 10, ch. 8.

Historical Note

The Act contained the following preamble: "There exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control

is to be brought about by aggression, force and violence, such as is now occurring in the Republic of Korea, and is to be accomplished in large part by infiltrating tactics involving the use of fraud, espionage, sabotage, terrorism and treachery. Since the State of Texas is the location of many of the Nation's largest and most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Texas is a most probable target for those who seek by force and violence to overthrow Constitutional Government, and is in imminent danger of Communist espionage and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the State of Texas and in the United States of America. The world Communist movement, temporarily halted by American dead, constitutes a clear and present danger to the citizens of the State of Texas. Therefore,"

ART. 6889-3A. SUPPRESSION OF COMMUNIST PARTY AND RELATED ORGANIZATIONS

Legislative finding and declaration

Section 1. Upon evidence and proof already presented before this Legislature, Congress, the courts of this State, and the courts of the United States, it is here now found and declared to be a fact that there exists an international Communist conspiracy which is committed to the overthrow of the government of the United States and of the several States, including that of the State of Texas, by force or violence, such conspiracy including the Communist Party of the United States, its component or related parts and members, and that such conspiracy constitutes a clear and present danger to the government of the United States and of this State.

Illegality of Communist Party and component or related organizations; dissolution; forfeiture of charter; property, etc.

Sec. 2. The Communist Party of the United States, together with its component or related parts and organizations, no matter under what name known, and all other organizations, incorporated or unincorporated, which engage in or advocate, abet, advise, or teach, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, are hereby declared to be illegal and not entitled to any rights, privileges, or immunities attendant upon bodies under the jurisdiction of the State of Texas or any political subdivision thereof. It shall be unlawful for such Party or any of its component or related parts or organizations, or any such other organization, to exist, function, or operate in the State of Texas. Any organization which is found by a court of competent jurisdiction to have violated any provisions of this Section, in a proceeding brought for that purpose by the District Attorney, Criminal District Attorney, or County Attorney, shall be dissolved, and if it be a corporation organized and existing under the laws of this State or having a permit to do business in this State, its charter or permit shall be forfeited, and, whether incorporated or unincorporated, all funds, records, and other property belonging to such Party or any component or related part or organization thereof, or to any such other organization, shall be seized by and forfeited to the State of Texas, to escheat to the State as in the case of a person dying without heirs. All books, records, and files of any such organization shall be turned over to the Attorney General.

Registration not evidence

Sec. 3. The fact of the registration of any person under the provisions of Article 6889-3 of the Revised Civil Statutes of Texas as an officer or member of any Communist organization shall not be received in evidence against such person in any proceeding for any alleged violation of this Act.

Prima facie evidence

Sec. 4. As to any particular organization, proof of its affiliation with a parent or superior organization, inside or outside of this State, which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, shall constitute prima facie evidence that such particular organization engages in or advocates, abets, advises, or teaches, or has as a purpose the engaging in or advocating, abetting, advising, or teaching of, the same activities with the same intent.

Unlawful acts

Sec. 5. It shall be unlawful for any person knowingly or willfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any of the above acts; or

(4) Assist in the formation of, or participate in the management of, or contribute to the support of, or become or remain a member of, or destroy any books or records or files of, or secrete any funds in this State of the Communist Party of the United States or any component or related part or organization thereof, or any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, knowing the nature of such organization.

Punishment for violations

Sec. 6. Any person who shall violate any of the provisions of Section 5 of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than Twenty Thousand ($20,000.00) Dollars, or imprisoned not less than one (1) year nor more than twenty (20) years in the State penitentiary, or may be both so fined and imprisoned. Provided that nothing in this Act shall be construed to repeal any part of Articles 83, 84, and 85 of the Penal Code of the State of Texas, relating to treason, nor any part of Articles 153 and 155 of the Penal Code of the

State of Texas, relating to seditious writings and language; and provided further, that no person convicted of any violation of this Act shall ever be entitled to suspension or probation of sentence by the trial court.

Disqualification to hold office, etc.

Sec. 7. Any person who shall be convicted finally by a court of competent jurisdiction of violating any of the provisions of this Act shall from the date of such final conviction automatically be disqualified and barred from holding any office, elective or appointive, or any other position of profit, trust, or employment with the government of the State of Texas or any agency thereof, or of any county, municipal corporation, or other political subdivision of the State.

Injunctions

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that such proceedings shall have priority over other cases in settings for hearing; provided further, that no such proceeding shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such

proceeding, and an affidavit of such notice filed with the application for such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

Search warrants

Sec. 9. A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence

obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial, save and except those arising under this Act.

Enforcement of law

Sec. 9a. The Internal Security Section of the Texas Department of Public Safety shall assist in the enforcement of the provisions of this Act, and for such purpose said Department may employ and pay the salaries and wages of such personnel and make such capital outlay purchases as it may deem necessary and pay necessary expenses, including but not limited to travel expenses (including automobile maintenance), all necessary operating expenses (including seasonal help), wages and salaries of employees, and make any and all other expenditures whatsoever necessary for the proper enforcement of the provisions of this Act; and for such purposes there is hereby appropriated out of the Operators and Chauffeurs License Fund such money as may be necessary, not to exceed the sum of Seventy-five Thousand ($75,000.00) Dollars for the biennium ending August 31, 1955. Acts 1954, 53rd Leg., 1st C.S., p. 9, ch. 3.

APPENDIX C

No. .....

IN THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF BEXAR

APPLICATION FOR SEARCH WARRANT

To the Honorable Judge of Said Court:

Now comes the Criminal District Attorney of Bexar County, Texas, and makes this application for a search warrant in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas, and in support of the same would show the Court as follows:

1. That he has good reason to believe and does believe that a certain place and premises in Bexar County, Texas, described as two white frame houses and one garage, located at the address of 1118 West Rosewood, in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A, Revised Civil Statutes of the State of Texas, and that such belief of this officer is founded upon the following information:

That this officer has received information from two credible persons that the party named above has such

books and records in his possession which are books and records of the Communist Party including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th of December, 1963 of pro-Communist material.

2. That this application for a search warrant has attached hereto the affidavit from two credible persons as to the information received.

WHEREFORE, PREMISES CONSIDERED the State of Texas asks that a search warrant issue to search the above described premises for the above described list of items set out above, and that such search warrant be directed as required by law.

Respectfully submitted,

JAMES E. BARLOW
Criminal District Attorney

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

.....
Notary Public in and for
Bexar County, Texas

APPENDIX D

AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared V. MURRAY JORDAN and LONNY F. ZWIENER, who being by me duly sworn, upon oath, depose and say:

That they have good reason to believe and do believe that a certain place and premises in Bexar County, Texas described as two white frame houses and one garage located at the address of 1118 West Rosewood, in the City of San Antonio, Bexar County, Texas, and being the premises under the control and in charge of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas and the operations of the Communist Party in Texas, are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

Such belief is based upon the following information: Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party.

.....

.....

SUBSCRIBED AND SWORN to before me this 27th day of December, 1963, to certify which witness my hand and seal of office.

TOM LEE
Notary Public in and for
Bexar County, Texas

APPENDIX E

Warrant

The State of Texas
County of Bexar

To the Sheriff or any other Officer of Bexar County,

Greetings:

Whereas, an application of the Criminal District Attorney accompanied by affidavits of two credible persons made on oath and in writing, in accordance with law, has this day been made before me alleging that the premises described as two white frame houses and one garage located at the address of 1118 West Rosewood in the City of San Antonio, Bexar County, Texas, and being the premises under the control of John William Stanford, Jr., is a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas.

You are therefore hereby commanded to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes, State of Texas, and to take possession of same.

HEREIN FAIL NOT, but have you then and there this warrant within three days from date of its issuance with your return thereon, showing how you have executed the same.

WITNESS my hand this the 27th day of December A.D. 1963.

SOLOMON CASSEB
Judge, 57th Judicial District,
Bexar County, Texas

Office-Supreme Court, U.S.
FILED
APR 21 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

NO. 40

JOHN W. STANFORD, JR.,
Petitioner

VS.

THE STATE OF TEXAS,
Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

WAGGONER CARR
Attorney General of Texas

HOWARD M. FENDER
Assistant Attorney General

LONNY F. ZWEIFER
Assistant Attorney General

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Criminal District Attorney
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

NO. 869

JOHN W. STANFORD, JR.,

Petitioner

VS.

THE STATE OF TEXAS,

Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes the State of Texas, Respondent, in response to service of a Petition for Writ of Certiorari received from the Counsel for Petitioner, filed in the Office of the Clerk, Supreme Court of the United States, and respectfully files this reply in opposition to the Petition for Certiorari filed herein.

OPINION BELOW

There is no opinion in this case. This is an appeal taken from the judgment of a magistrate upon a hearing on a search warrant. The judgment of the trial court is non-appealable to any superior state court.

RECORD SUBMITTED

The Petitioner has presented to the Court a Transcript of the Proceedings which includes all of the papers filed in the case. A Statement of Facts has also been field which contains all of the testimony taken in the cause, with the exhibits introduced as evidence attached.

QUESTIONS PRESENTED

There are three basic questions involved in this appeal. The first of these is the validity of the statutes in Texas providing for Suppression of the Communist Party and Related Organizations. These statutes are contained in Article 6889-3 and 6889-3A of the Revised Civil Statutes of Texas. The first of these is known as the Communist Control Act and the second is referred to generally as the Suppression Act. The search warrant issued in this cause was issued in specific compliance with Section 9 of Article 6889-3A, the Suppression Act. The constitutionality of this law has been challenged.

The second of these questions is whether or not under the particular facts shown by the record in this case that the United States government has preempted the field of subversion as to this particular individual defendant and therefore precluded action on the part of the State.

The third of these questions is whether or not the search warrant issued violated a provision of the United States Constitution either under the First, Fourth, Fifth, or Fourteenth Amendment of the same. This was alleged by the Petitioner in the Court below and is brought forward in this appeal with many various grounds of lack of constitutionality being charged.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, First Amendment, reads in part, as follows:

> "Congress shall make now law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The United States Constitution, Fourth Amendment, reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The United States Constitution, Fifth Amendment, reads in part, as follows:

> No person shall * * * be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; * * *"

The United States Constitution, Amendment Fourteen, states, in part, as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws."

The Communist Control Law of Texas is contained in Article 6889-3 of the Revised Civil Statutes of Texas. The Communist Suppression Act is contained in Article 6889-3A of the Revised Civil Statutes of Texas. A complete copy of these acts have been appended to the Petition for the Writ as Appendix B, and appears at page 21 of the Petition. The most pertinent portion of such act is Section 9 of Article 6889-3A which reads as follows:

> "A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible

citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial save and except those arising under this Act."

The Suppression Act which contains the above statute provides in brief the following:

1. That the Legislature has determined that there is a Communist conspiracy committed to the overthrow of the government of the United States, of the several states and of Texas, by force and violence. (Section 1, Article 6889-3A.)

2. That it is unlawful for any person to:

a. Commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy, or alter, or assist in the overthrow, destruction, or alteration of, the constitutional form of the United States, or of the State of Texas, or of any political subdivision of either of them. (Section 5, Subsection 1, Article 6889-3A.)

b. Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or (Section 5, Subsection 2, Article 6889-3A.)

c. Conspire with one or more persons to do any of

the above acts. (Section 5, Subsection 3, Article 6889-3A.)

d. Assist in the formation of, or participate in the management of, or *contribute* to the support of, or *become or remain* a member of, * * * the Communist Party of the United States or any component or related part or organization thereof, * * * knowing the nature of such organization. (Section 5, Subsection 4, Article 6889-3A.) (Emphasis Supplied.)

The punishment for such an offense is set out in Section 6 as a fine not more than $20,000 or imprisonment not less than one year nor more than 20 years in the State penitentiary.

Pertinent provisions of Title 6 of the Code of Criminal Procedure of Texas, referred to in the Communist Suppression Law cited above, read as follows:

> *"Article 304. 'Search Warrant'*
>
> "A 'search warrant' is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense.
>
> *"Article 312 Application to Search Other Places*
>
> "A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:

"1. A description of the place suspected.

"2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

"3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

"4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth.

"*Article 316 To Search Suspected Place*

"A warrant to search a suspected place shall be sufficient if it contain the following requisites:

"1. That it run in the name of 'The State of Texas.'

"2. That it describe with accuracy the place suspected.

"3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed.

"4. That it name the person accused of having charge of the suspected place, if there be any such person, or, if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate.

"5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.

"*Article 328 Magistrate Shall Investigate*

"The magistrate, upon the r turn of a search

warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him."

STATEMENT OF THE CASE

Two Assistant Attorneys General of the State of Texas, Lonny Zwiener and V. Murray Jordan, were assigned to the investigation of Communist Party Activity in the State of Texas. (S. F. 77, S. F. 71.) Jordan testified that in this investigation he talked to confidential informants and was told that the Petitioner was an official of the Communist Party in Texas. He was also told that Stanford distributed certain described Communist Party literature at Communist meetings in Texas. He was shown various samples of the material used and was told by these informants that he (the informant) had received this literature from Stanford at a Party meeting. (S. F. 77.) Zwiener testified that he also had such information, and added that he had been informed that this type of literature, pamphlets, etc., were located on the premises of John Stanford, and that on December 12, 1963, this type of literature was mailed from the home address of John Stanford. (S. F. 71-72.)

A copy of the search warrant application is included in the Appendix to the Petition as Appendix C at page 33, and the copy of the joint affidavit from Zwiener and Jordan is included in Appendix D to the Petition at page 35. The form of these instruments is correct with the exception of the lack of the signatures in the Petition, which, of course, appear on the originals.

Such search warrant was served upon the wife of the Petitioner at the home of the Petitioner on Decem-

ber 27, 1963, and a return was made by the officers serving the warrant and introduced as evidence as Exhibit 17.

REASONS THAT THE WRIT SHOULD BE DENIED

I.

The Texas Communist Control and Suppression Acts are Valid

This is the first time that there has ever been a challenge to the constitutionality of the statutes of Texas suppressing the operations of the Communist Party in Texas.

The Criminal District Attorney of Bexar County, Texas, has held up the presentment of this matter to the Grand Jury for indictment of this Petitioner because of the challenge made in this appeal and because of the important questions that have arisen.

It has been held by this Court that the State may lawfully and constitutionally enact a statute which provides that it shall be a felony to advocate the overthrow of the lawful organized government by force and violence. *Gitlow vs. People of New York,* 1925, 268 U. S. 652, 69 L. Ed. 1138, 45 S. Ct. 625. In that case the statute defined the offense called "criminal anarchy" as the doctrine that organized government should be overthrown by force or violence or by any unlawful means and declared that the advocacy of such doctrine was a felony. The Court pointed out that:

> "Every presumption is to be indulged in favor of the validity of the statute. * * * And the case

is to be considered 'in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare; * * *.' That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear."

The Court in that case, cited many other decisions along the same vein, both from this Court and the appellate courts of the various States.

For instance, the validity of a state statute allowing the revocation of a license to a school which teaches the overthrow of the government by force, violence or unlawful means was upheld in *People vs. American Socialist Society,* 1922, 195 N. Y. Supp. 801, 202 App. Div. 640.

In *People vs. Lloyd,* Supreme Court of Illinois, 1922, 136 N. E. 505, 304 Ill. 23, where the prosecution was under a statute making it a criminal offense to advocate the overthrow of the organized government by force and violence the Court said:

"Plaintiffs in error contend that every section of said act is invalid, for the reason that the General Assembly of Illinois does not have the power and authority to make unlawful and punishable the advocacy of the reformation or overthrow of all or of the separable part of the constitutional representative form of government of the United States of America, or the constitutional representative form of government of all or any one of the other 47 several states of the United States, and that the Congress of the United States is the only legislative body in the United States, if any, which has the power and authority to make such advocacy unlawful and punishable. This conten-

tion is based in part at least on the argument that the power and authority to 'guarantee to every state in this Union a republican form of government' and to 'protect each of them against invasion' are lodged by section 4 of article 4 of the Constitution of the United States exclusively in the United States. This contention is not sound. The citizens of this state are citizens of the United States, and the citizens of the United States residing within the borders of this state are citizens of this state. Each citizen owes a duty to these two separate sovereignties. The state is a part of the nation, and owed a duty to the nation to support the efforts of the national government to secure the safety and protect the rights of its citizens, and to preserve, maintain, and enforce the sovereign rights of the nation against public menace, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively defending itself against such public enemies. * * * There is nothing in the federal Constitution in any way granting to the federal government the exclusive right to punish disloyalty."

There the conviction was affirmed.

There are other cases in which the state statutes have been upheld. Some of these are:

Commonwealth v. Widovich, 1929, Supreme Court of Pennsylvania, 295 Pa. 311, 145 A. 295, Cert. Den. 280 U.S. 518, 74 L. Ed. 588, 50 S. Ct. 66. This case upheld the Pennsylvania Sedition Statute.

Whitley v. People of California, 1926, 47 S. Ct. 641, 71 L. Ed. 1095, 274 U.S. 357. This case upheld the validity of the California "criminal syndicalism" statute.

State v. Tachin et al., Supreme Court of New Jer-

sey, 1919, 106 A. 145. Affirmed by Court of Appeals, 1919, 108 A. 318. This case upheld a State statute prohibiting sedition against the Federal government alone.

Faxon v. School Committee of Boston, Supreme Judicial Court of Massachusetts, 1954, 120 N. E. 2d 772. This case upheld a state statute requiring a teacher to testify whether or not she was a member of the Communist Party.

Wyman v. Sweezy, Supreme Court of New Hampshire, 1956, 121 A. 2d 783. This case upheld the right of the Attorney General to investigate subversive activities in his state under a Legislative Resolution. The holding in this case was reversed by the Supreme Court of the United States in Sweezy v. New Hampshire, 354 U. S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311, in in 1957, on the theory of infringement of "academic freedom" however the law of this case was again modified by the *Uphaus* case discussed hereafter under this point.

This was the condition of the law until the decision in *Commonwealth of Pennsylvania v. Nelson,* 1956, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640. This was an appeal by Steve Nelson, an organizer of the Communist Party from a conviction under the Pennsylvania sedition act. The facts of this case become complicated by the fact that the alleged sedition was against the "United States" and not against the State of Pennsylvania. Nelson had raised in the Superior Court of Pennsylvania that the court was without jurisdiction because the Federal Government had pre-empted or occupied the field. (92 A. 2d 434.) The state Superior Court had said:

"These Acts (McCarran and Smith) are very broad and include the protection of the national as well as the state government from the ravages of Communism. However, that alone does not nullify the State legislation. As we have just stated, that nullification comes about only when the Federal Government's jurisdiction is exclusive or when it is supreme, and in the latter case the Federal Government must expressly or by necessary implication indicate its intention of superseding or precluding action of the states. * * *"

The Superior Court then concludes that there is nothing in either act to lead to that conclusion and points out that the McCarran Act has a specific provision that expressly states that it is not modifying existing law.

The Superior Court then holds that sedition is a field over which the States and the Federal government have concurrent jurisdiction. This Court also holds that the state need not have to depend upon the vigilence and action of Federal authority and risk its own existence. It is pointed out that there is absolutely nothing in the Constitution which relegates this field exclusively to the United States.

When the case finally reached the Supreme Court of the United States, the opinion, handed down by the Chief Justice for the majority, asserted for the first time the doctrine of Federal pre-emption in the field of sedition and had statements in his opinion that leave the clear impression that no State sedition statute is thereafter valid. Such statements include:

"It should be said at the outset that the decision in this case does not affect the right of the States to enforce their sedition laws at times when the Federal Government has not occupied the field

and is not protecting the entire country from seditious conduct. * * *"

How state officials charged with the duty of enforcing the Legislative enactments of the state are to determine the times that the Federal Government is supposedly protecting the entire country and the times that the Federal Government is not, is not disclosed.

Nelson also states:

"* * * Neither does it limit the right of the State to protect itself at any time against sabotage or attempted violence of all kinds. Nor does it prevent the State from prosecuting where the same act constitutes both a federal offense and a state offense under the police power. * * *"

After setting out the Smith Act, the Court concludes:

"We examine these Acts only to determine the congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress had intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law. * * *"

"*Second,* the federal statutes touch a field in which the federal interest is so dominant that the federal system (must) be assumed to preclude enforcement of state laws on the same subject. * * *"

"*Third,* enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program. * * *"

Under this point the Court relies upon a Presiden-

tial request that all sheriffs and other officers turn over to the F.B.I. all information on subversion and a speech by J. Edgar Hoover. On this authority the doctrine of pre-emption is imposed.

If this were the end of the matter, there would have been no search warrant run on the home of this Petitioner and no possibility of his indictment. But this is not the end of the story, for in *Uphaus v. Wyman,* 1958, 360 U.S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090, the Court speaking through Justice Clark discussed again the problem of sedition and the states. Here the judgment appealed from was for contempt of the Legislature for refusal to answer questions before an investigating committee. The contention of the Defendant was that the Smith Act and the other federal statutes occupied the field of subversion to the exclusion of the state authority. He relied specifically on the *Nelson Case,* supra, and it certainly holds what he says it holds. However, at this point the Court attempts to clarify what it meant in this opinion by saying:

> "Appellant vigorously contends that the New Hampshire Subversive Activities Act of 1951 and the resolution creating the committee have been superseded by the Smith Act, as amended. In support of this position appellant cites Com. of Pennsylvania v. Nelson, supra. The argument is that Nelson which involved a prosecution under a state sedition law, held that 'Congress had intended to occupy the field of sedition.' * * * This rule of decision, it is contended, should embrace legislative investigations made pursuant to an effort by the Legislature to inform itself of the presence of subversives within the State and *possibly to enact laws in the subversive field.* The appellant's argument sweeps too broad. In Nelson itself we said that the 'precise holding of the court * * * is

that the Smith Act * * * which prohibited the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the *same conduct.*' (Italics supplied) * * * The basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. *The opinion made clear that a State could proceed with prosecutions for sedition against the State itself;* that it can legitimately investigate in this area follows *a fortiori.* In Sweezy v. State of New Hampsire, supra, where the same contention was made as to the identical state Act, it was denied *sub silentio.* Nor did our opinion in Nelson hold that the Smith Act had proscribed state activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.' In footnote 8 of the opinion it is pointed out that the State had full power to deal with internal civil disturbances. Thus *registration statutes, quo warranto* proceedings as to subversive corporations, the subversive instigation of riots and a host of other subject directly affecting state security furnish grist for the State's legislative mill * * *'' (Emphasis Supplied).

What the problem then boils down to is this. If the Texas statute is invalid because it is pre-empted by action of the Smith or McCarran Acts, then the search in this case is illegal. This is because there was no valid statute upon which it could be based. If this is the case, the Petition should be granted. We do not think that this is the case. We believe that the intent of the *Nelson* case is explained in the *Uphaus* case, and that this intent is not to arbitrarily strike down all of the statutes of the various states involving subversion.

This court has had an occasion to discuss the rules with relation to the doctrine of pre-emption in *Head vs. New Mexico Board of Examiners,* Decided June, 1963, — U.S. —, 83 S. Ct. 1759, —— L. Ed. 2d ——. In the majority opinion by Justice Stewart, he sets out the general rules in this type of case. He says that a charge of pre-emption by the Federal Government of a particular field, the rules are:

1. Such claim cannot be judged by broad statements about the "comprehensive" nature of the federal regulation.

2. The question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State must be answered by a judgment on the facts of the particular case.

3. The basic question is whether Congress intended to make its jurisdiction exclusive.

4. In areas of the law not inherently requiring national uniformity, decisions require that state statutes, otherwise valid be upheld, unless there is found:

a. Such actual conflict between the two schemes of regulation that both cannot stand in the same area, or

b. Evidence of a congressional design to preempt the field.

In Justice Brennan's concurring opinion, he states the rules in the following sequence:

1. Whether the subject matter is clearly one which "by its very nature" admits "only of national supervision."

2. Whether there is evidence of congressional intent exclusively to occupy the field.

3. Whether as a practical matter—both regulations can be enforced without impairing the federal superintendence of the field. This test also requires a show-

ing of conflict in purpose or in operation between the state and federal regulations involved.

A recent district court case upholding the Louisiana Anti-Subversion Law, a law very similar to the Texas statutes is *Dombrowski, et al. v. Pfister,* Civil Action No. 14019, Eastern District of Louisiana, New Orleans Division (not yet reported).

We do not think that the Texas statutes are void or invalid upon their face for any constitutional reason. Since the statutes include subversion aimed at the State of Texas, we do not think that the Federal government has the exclusive jurisdiction in this field. Under the explanation of the *Nelson* case in the *Uphaus* case, we do not think that the statute has been superseded. After all, under the *Uphaus* case, we do not think that the statute has been superseded. After all, under the *Uphaus* case, there would have been no reason for a Legislative inquiry if there was not the power to legislate. Therefore, we think that on this ground the Petition for the Writ of Certiorari should be denied.

II.

Pre-emption as a Factual Matter

The Petitioner proved by its witness, John Goode (S. F. 10) that the Petitioner was under investigation by the Security Division of the State of Texas and the Governor of Texas in 1951. (S. F. 11). About all this established was that this Petitioner was suspected of Communist activity for a considerable period of time. The Petitioner also proved that the United States Marshal for the Western District of Texas, Jesse Dobbs, had served the Petitioner with a Report

and Order that he register as a Communist on December 26, 1963. (S. F. 3-5). The search warrant in this case was served upon the house of the Petitioner on December 27, 1963.

Hugh Nations, Reporter for the San Antonio Express, a daily newspaper, testified that the news report of the order by the Subversive Activities Control Board did not get into the newspaper and onto the street until 12:45 P. M. on December 27, 1963. (S. F. 85). The parties that conducted the search arrived at the Stanford residence at 2:30 P. M. (S. F. 27). The application for the warrant recited that it was made as a result of mailing of material from the Petitioner's house on December 12, 1963. None of the material mailed was introduced.

It is the position of the State of Texas that the doctrine of pre-emption is not a subject of factual proof as was here attempted by the Petitioner, but is, in fact, a legal proposition involving the comparison of the laws and a construction involving the intention of Congress and the State Legislature passing the act. In this matter the *Nelson* case, supra, is again relied upon by the petitioner, and the construction of the case in the *Uphaus* case.

The position of the State is that these holdings show clearly that the State and Federal governments have concurrent jurisdiction in this matter. At least this is true in that the Federal government has the right to protect the United States from subversion and the State of Texas has a right to defend itself from overthrow of the State. The fact that both authorities are interested in the same individual would appear to show nothing in relation to the right of each government to act. We feel that the intent of the holdings

in the *Nelson* and *Uphaus* cases is not that whichever authority begins first, in point of time, ousts the other from jurisdiction and power to act. A more legical view would be that each authority has the right to protect itself.

As to this point, the State feels that the Petition for Certiorari should be denied.

III.

Constitutional Attack on the Search Warrant Itself

A multi-barreled attack is levied at the search warrant in this case. It is claimed to violate the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. In addition, other claims are made concerning conformity to the statutes involved.

In 24 R. C. L. 715, it is said:

> "While search warrants seem to have been first confined to proceedings for the discovery and seizure of stolen goods, their use has been extended by statutory enactments as an aid to the discovery and punishment of any character of public offense when it may be available. The grounds on which such a warrant may be issued may be divided into three classes: (1) when the property sought has been stolen or embezzled; (2) when it has been used as a means of committing a felony; and (3) when it is in the possession of any person with the intent to use it as the means of committing a public offense. But as a rule the use of it may not be extended by construction to any case not clearly covered by statute. However, the term 'unreasonable,' in the constitutions of the states, has allusion to what had been practiced before our revolution, and especially to general search war,-

rants, in which the person, place or thing was not described. It is believed that no search warrant is unreasonable, in the legal sense, when it is for a thing obnoxious to the law, and of a person and place particularly described, and is issued on oath of probable cause."

Article 304 of Title 6 of the Code of Criminal Procedure of Texas authorizes search warrants for the purpose of searching premises for stolen property or "implements kept for the purpose of being used in the commission of any designated offenses." This type of provision is not unusual. The Supreme Court of Oregon has pointed out in *State of Oregon v. Chinn,* 1962, 373 Pac. 2d 392, that virtually every American jurisdiction has a statute of similar import which restricts the type of evidence which may be seized under warrant. In addition to this the Communist Suppression Act itself contains a specific provision as to what may be seized under Section 9 of Article 6889-3A, Texas Revised Civil Statutes.

The search warrant in this case calls for:

> "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas. * * *"

A. Probable Cause

The petitioner complains that the search warrant was not issued on probable cause. The facts show that the two Assistants Attorney General involved, Zwiener and Jordan, had information from credible and reliable persons that:

1. The Petitioner was an official of the Communist Party of Texas.

2. That Petitioner had distributed literature which was identified as Communist Party literature at Communist meetings in Texas.

3. That Jordan had been shown samples of this literature and know what such literature consisted of.

4. That on December 12, 1963, such literature had been mailed from the home address of Petitioner. (S. F. 77, 71-72).

It is clear under the state law that membership in the Communist Party, attendance of such meetings, being an official of such party, failure to register as a member of such Party, and contributing to further the cause of this party would also constitute offenses under the Communist Control and the Suppression Acts, discussed heretofore.

The attack made upon the search warrant under this section seems to be that the Petitioner feels that the warrant was issued on heresay information and conclusion from what the Affiants had been told.

The Supreme Court of the United States has recently held that probable cause could be supported by hearsay, and that a search warrant could constitutionally issue on this type of information. *WongSun vs. United States,* 1963, 371 U. S. 471, 83 S. Ct. 407, 413, 9 L. Ed. 2d 441; *Jones vs. United States,* 1960, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697.

B. Items searched for and description in warrant

The items seized in this raid included many books and papers. Most of the books were in multiple copies. Included were such things as Reports of the Fair Play

for Cuba Committee. Other books included On the Party-Lui Sho-Chi, Peking, 1950; Soviet booklets on the Trial of American U-2 Spy Pilot from Moscow: Joseph Stalin's biography; and books by Earl Browder, Eugene Dennis, Fidel Castro, Che Guevara, Karl Marx, Frederick Engles, V. I. Lenin, William Z. Foster, Hu Sheng, N. S. Khrushchev and Gus Hall. Also included were several files of addresses and names; and a metal letter file cabinet containing a file of the Gus Hall-Benjamin Davis Defense Committee and other files.

The last item listed above, contained a large amount of letter files, samples of which have been shown as exhibit 16. Unfortunately, the last few files in this cabinet contained some personal files of the Petitioner and were tendered back to the Petitioner in the course of the hearing. (S. F. 49, 51). The Petitioner refused any of his personal papers, apparently under the impression that acceptance would void his claim of invalidity of the search.

The position of the State of Texas is that such items would, in view of the facts shown, constitute implements kept for the purpose of committing a designated offense, under the statute. Various items have been held to constitute implements under our law. In *State of Oregon v. Chinn,* supra, the Supreme Court of Oregon held that a bottle used to give beer to a minor could be an implement in the commission of statutory rape. This court also held that a bed sheet and a camera with which pictures of the girl were taken could constitute implements.

Judge Learned Hand discussed a similar problem in *U. S. vs. Kirschenblatt,* 1926, 2nd Cir, 16 F. 2d

202, when considering a search in which papers showing liquor transactions was seized and stated:

> "* * * The real difficulty in this case at bar appears to us to be in the application of the last doctrine, because it is apparent that a paper may be itself the very thing against which the law is directed. * * * As was said in Gouled v. U. S., papers as such have no sanctity, and may be seized, like any other property, if they offend. Courts have at times extended the doctrine to papers, not actually part of the criminal act, but necessary to the conduct of the venture as a whole. * * *
>
> "The forged note, the fraudulent prospectus, the policy slip, the written contract, if that be forbidden, the seditious broadside—perhaps all of these may be contraband and subject to seizure when found on the premises. * * *"

The Court held that illegally overprinted stamps were contrabrand in *U. S. v. Rabinowitz,* 1950, 339 U. S. 56, 70 S. Ct. 430, 94 L. Ed. 653.

In Leahy v. U. S., 1959, 9th Cir., 272 F. 2d 487, under a charge of exasion of the occupation tax on wagering the court upheld the seizure of an "adding machine, a telephone, record books, receipts, pencils, pens, money, keys to safety deposit boxes, rifles and pistols as instrumentalities of crime and stated specifically:

"* * * records of an illicit business are instrumentalities of crime." See also: *Johnson v. United States,* 1961, USCA-DC, 293 F. 2d 539,

Chief Justice Taft remarked in writing for the majority in *Carroll et al v. United States,* 1925, 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543, that

> "The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens. * * *"

In *Marron v. United States,* 1927, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231, the Court held that the seizure of bills sent to a place of business and a ledger showing the operation of a place of business selling intoxicating liquor did not violate the Fourth Amendment. Here the items had been taken by prohibition agents during a search for intoxicating liquor under a warrant for liquor. This result was reached on the theory that such search was not unreasonable because such items were things used to carry on the criminal enterprise. The court noted that they were as important as the bottles and glasses to the carrying on of the business.

Certainly, in view of the knowledge that the officers in this case had, the pamphlets and books seized here were important to carrying on the seditious activity involved. See also *Adams v. New York,* 24 S. Ct. 372, 192 U. S. 585, 48 L. Ed. 575.

The Petitioner complains of the description of the property to be searched for, and contends that such description is insufficient to meet the constitutional test. The description is precisely in the words of the statute as to what may be searched for. As was pointed out in *Commonwealth of Pennsylvania vs. La Camera,* 1963, 186 A. 2d 63, stolen property was required to be particularly described because the owner knew what his property consisted of. But the same is not true when searching for such items as gaming implements,

implements for the sale or manufacture of liquor and like items. To hold otherwise would require the officer to be specific in guesswork as to what he would find.

As to State practice, the Constitution of Texas actually recognizes this problem when it states in Article 1, Section 9 as follows:

> "The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them *as near as may be,* nor without probable cause, supported by oath or affirmation." (Emphasis supplied.)

It has been held that a general description of the property to be searched for is sufficient under the laws of Texas. *Parrack v. State of Texas,* Court of Criminal Appeals, 1950, 288 S. W. 2d 859.

In view of the fact that the search was made on probable cause, and that the description of the property to be seized, though general, was sufficient to point out what the search was being made for, and in view of the fact that the search warrant pointed out the statute in violation of which the property was held, the Communist Suppression Act clearly authorized the search made here, the State takes the position that the Petition for Certiorari should be denied on this point.

CONCLUSION

There is no merit to the contentions of the Petitioner and the Petition for Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I have entered my appearance on behalf of the Respondent, State of Texas, in the above entitled and numbered cause, and I certify that copies of the foregoing Response and Brief of Respondent were served upon Maury Maverick, Jr., Maverick Building, San Antonio 5, Texas, John J. McAvoy, 14 Wall Street, New York 5, New York, and Melvin L. Wulf, 156 Fifth Avenue, New York 10, New York, Attorneys for Petitioner, by depositing same in the United States mail, properly addressed, postage paid, certified mail, on this the_____day of April, 1964.

JAMES E. BARLOW
Of Counsel

Office Supreme Court, U.S.
FILED
OCT 1 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner,

—v.—

STATE OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

BRIEF FOR PETITIONER

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IN THE

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OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner,

—v.—

STATE OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

BRIEF FOR PETITIONER

Opinion Below

No opinion was rendered by the court below.

Jurisdiction

The judgment of the court below was entered on January 20, 1964 (R. 8-9). A timely motion for a new trial, filed on January 29, 1964 (R. 10-14), was overruled the same day (R. 15). A petition for certiorari was filed in this Court on February 26, 1964. The writ was granted on June 22, 1964. The jurisdiction of this Court rests on 28 U. S. C., Section 1257(3).

Statutes Involved

The statutes involved are Article 6889-3, entitled "The Texas Communist Control Law" (hereafter called the "Control Law"), and Article 6889-3A, entitled "An Act for the Suppression of Communist Party and Related Organizations" (hereafter referred to as the "Suppression Law"), of the Revised Civil Statutes of Texas. They are printed in the Appendix, *infra*.

Questions Presented

I. Whether the seizure of petitioner's books, papers, records and private correspondence, and the search warrant which purported to authorize the seizure, violate the Fourth and Fourteenth Amendments to the United States Constitution, because:

a) There was no probable cause for the issuance of the warrant;

b) The warrant did not specify the crime charged;

c) The warrant did not particularly describe the things to be seized.

II. Whether Section 9 of the Suppression Act is unconstitutional on its face and as applied in this case because it violates the First, Fourth, Fifth and Fourteenth Amendments.

III. Whether Articles 6889-3 and 6889-3A, Revised Civil Statutes of Texas, are superseded by federal legislation.

Statement of the Case

On December 26, 1963, petitioner was served with a report and order of the Subversive Activities Control Board calling for his registration as a member of the Communist Party of the United States pursuant to Section 8 of the Subversive Activities Control Act of 1950, 50 U. S. C. §787 (App. Ex. 1; R. 16-18). On the following day, December 27, 1963, James E. Barlow, Criminal District Attorney, Bexar County, Texas, made application (R. 31, 71-72) in the District Court, 57th Judicial District, Bexar County, for a search warrant "in accordance with Section 9, of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of Texas." After reciting that he had good reason to believe and did believe that petitioner's premises was "a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments [hereafter called "books, [etc.]"] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed and used in violation of Articles 6889-3 and 6889-3A," the application of Mr. Barlow stated that his belief was founded on the following information (R. 71):

> "That this officer has received information from two credible persons that the party named above has such books and records in his possession which are books and records of the Communist Party including party lists and dues payments, and in addition other items listed above. That such information is of recent origin and has been confirmed by recent mailings by Stanford on the 12th of December, 1963 of pro-Communist material."

The application attached an affidavit (R. 31, 70) signed by two persons, Mr. Lonny Zweiner and Mr. V. Murray Jordan, both Assistant Attorneys General of the State of Texas. The affidavit recited that the beliefs of the affiants in the existence on petitioner's property of

> "books [etc.] concerning the Communist Party of Texas and the operations of the Communist Party in Texas . . . unlawfully possessed and used in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas" (R. 70)

were founded upon the following information:

> "Recent mailings by Stanford on the 12th of December, 1963, of material from his home address, such material being identified as pro-Communist material and other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party" (*ibid.*).

The warrant (R. 31, 72-73), issued by Hon. Solomon Casseb, Jr., Judge, 57th Judicial District, Bexar County, after reciting that the "application [is] . . . in accordance with law," and the allegations made regarding existence of the "books [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas" and their unlawful possession and use in violation of the Control Law and Suppression Law at the petitioner's home, ordered the executing officers

> "to enter immediately and search the above described premises for such items listed above unlawfully possessed in violation of [the Control Law and the Suppression Law], and to take possession of same."

The warrant was executed on December 27, 1963 in the course of a five-hour search of petitioner's home. About two thousand pieces of literature, books, pamphlets, and other publications were seized.[1] Some of the literature was from petitioner's private library (R. 33), but the great majority consisted of stock from petitioner's book-selling business which was conducted under the name of All Points of View (R. 26, 33-34, 68, 131). Also taken were petitioner's private papers, including correspondence with his attorney (R. 43-44, 107-109) and with the committee supporting his defense against the charges of the Subversive Activities Control Board (R. 44, 111-129), a personal letter to President Kennedy's widow (R. 44, 110), certificate of title to his auto, his marriage certificate, and medical and furniture bills (R. 42, 45-46).[2]

On January 9, 1964, petitioner made application before Judge Casseb for an order to "quash, set aside, and hold for naught" the warrant, and for return of all items seized under it (R. 1-5). Judge Casseb ordered a hearing regarding the search warrant (R. 5-6), which was had on January 17, 1964.

At the hearing, Mr. Lonny Zweiner, one of the signers of the affidavit upon which the warrant issued, upon objection by the State's attorney, was not permitted to answer a ques-

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[1] The material seized is inventoried in the return to the warrant (R. 74-106).

[2] The return shows that among the fourteen boxes of books seized (R. 28) were writings of the following persons: Justice Hugo L. Black (R. 81), Earl Browder, Fidel Castro, Benjamin Davis, Theodore Draper (R. 82), Che Guevara, Pope John XXIII (R. 93), N. S. Khrushchev, V. I. Lenin, Karl Marx and Friedrich Engels, and Jean-Paul Sartre (R. 95). In addition, one of the items seized and listed in the return (1 box cardboard 5" x 4" x 10" containing index cards containing addresses (R. 106)) contained the mailing list assembled by petitioner in his book business.

tion about what specified phase or phases of the acts had been violated through unlawful possession or use of the seized material, or otherwise (R. 56-58). Mr. Zweiner continued to describe his information sources only as "credible persons" who "described" the literature for which the search was made as being "communistic literature, which follows the communist line and is designed to forward the aims and purposes of the Communist Party" (R. 58).

Mr. Zweiner also said "I would like to state further that the laws of the State of Texas makes being a member of the Communist Party a crime; whether or not this is constitutional is probably another question. . . ." (R. 41). He admitted that no physical objects capable of overthrowing the United States were taken from petitioner's home, "not . . . unless you consider throwing hard-back books at people, like a weapon" (R. 58).

The hearing also established that Mr. V. Murray Jordan, the other affiant, and the officer who supervised the selection of the materials taken pursuant to the warrant (R. 55, 56), selected only "pro-Communist" literature. Mr. Jordan was a 1959 graduate of the University of Texas Law School. He had been a finance major as an undergraduate. He had not studied communism either in college or law school (R. 59-60). He had simply looked at "various samples of . . . communist party literature . . ." (R. 61).

Mr. Jordan's unidentified informants told him they had received "communist party literature" from petitioner at a Communist Party meeting (R. 61-62), and that the distributed "material" would be the subject of discussion led by petitioner, "that discussion about an article from these pamphlets and this was stated to be the communist party line or leaf [sic] of the communist party line" (R. 63). Mr. Jordan (R. 63-64), and Mr. Zweiner (R. 55-56) believed the

warrant ordered only the seizure of books which were sympathetic to the Communist Party "line".

On January 20, 1964, the court below denied petitioner's application for the return of his books and papers (R. 8-9). On January 29, 1964 petitioner moved to set aside the judgment and to obtain a new trial, setting forth all the grounds which had been previously asserted as foundation for nullifying the warrant and ordering the return of the materials taken under it, and alleging the judgment was contrary to the law and the evidence (R. 10-16). On the same date the court overruled the motion (R. 15).

Summary of Argument

I.

The warrant under which petitioner's books, papers and correspondence were seized was constitutionally defective in three respects: (a) The magistrate who issued the warrant was supplied with no "facts or circumstances" upon which to base a decision whether probable cause existed. *Aguilar* v. *Texas*, 378 U. S. 108 (1964); *Jones* v. *U. S.*, 362 U. S. 257 (1960); *Nathanson* v. *U. S.*, 290 U. S. 41 (1933). (b) The warrant recited only that it was issued to search for violations of "Article 6889-3 and Article 6889-3A, Revised Civil Statutes, State of Texas," which contain a wide variety of forbidden acts. The specific crime for which the warrant issued was not specified. *U. S.* v. *Simmons*, 96 U. S. 360 (1877); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *Ex Parte Burford*, 3 Cranch 448 (1806); *Henry* v. *U. S.*, 361 U. S. 98 (1959). (c) The warrant failed to "particularly describe . . . the . . . things to be seized." In effect, the officers wielded a general search warrant. *Marron* v. *U. S.*, 275 U. S. 192 (1927), *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961).

II.

The procedure authorized by Section Nine of the Suppression Law afforded petitioner less protection than is required for suppression of allegedly obscene books. *Marcus* v. *Property Search Warrant*, 367 U. S. 717 (1961); *A Quantity of Books* v. *Kansas*, 378 U. S. 205 (1964). Since Texas sought to suppress petitioner's books because of their political content, no amount of procedural due process would validate its invasion of petitioner's privacy and liberty.

In addition, Section Nine authorizes the seizure of evidence, thereby violating the Fourth and Fifth Amendments. *Boyd* v. *United States*, 116 U. S. 616 (1886); *Gouled* v. *United States*, 255 U. S. 298 (1921); *United States* v. *Lefkowitz*, 285 U. S. 452 (1932). Under no theory can petitioner's books and papers be treated as instrumentalities of crime or contraband.

III.

The Control Law and Suppression Law are superseded by federal legislation. The preemption test in *Nelson* v. *Pennsylvania*, 350 U. S. 497 (1956)—pervasiveness of federal legislation, dominant federal interest, and conflict with federal laws—is satisfied by virtue of the scope of the Texas statutes and their clear purpose to regulate the Communist Party and its activities.

Congress has adopted exhaustive legislation intended to regulate the same activities as do the Texas statutes. The activities of the Communist Party bear principally upon international affairs, foreign affairs, and the common defense—all matters which affect the areas solely entrusted to the federal government. Regulation of the Communist Party requires a uniform policy which can be achieved only if the federal government has sole responsibility over its activities.

ARGUMENT

I.

The seizure of petitioner's books, papers, and private correspondence violated the Fourth and Fourteenth Amendments.

a. The Warrant Issued Without Probable Cause

The search warrant in this case was issued without probable cause in violation of the Fourth Amendment, which applies to the States through the Fourteenth. *Mapp* v. *Ohio*, 367 U. S. 643 (1961), *Ker* v. *California*, 374 U. S. 23 (1963).

> "Under the Fourth Amendment an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough." *Nathanson* v. *U. S.*, 290 U. S. 41, 47 (1933).

> "Probable cause exists if the facts and circumstances . . . warrant a prudent man in believing that the offense has been committed." *Henry* v. *U. S.*, 361 U. S. 98, 102 (1959).

Any doubt about the failure of the warrant in question to meet the constitutional requirement that it issue only upon probable cause, was extinguished by this Court in *Aguilar* v. *Texas*, 378 U. S. 108 (1964). That case struck down as insufficient an affidavit in support of an application for a search warrant which stated:

> "Affiants have received reliable information from a credible person and do believe that heroin . . . and other narcotics and narcotic paraphernalia are being

> kept at the above described premises for the purposes of sale and use contrary to the provisions of the law." At 109.

The application in the present case is strikingly similar. After stating that "he has good reason to believe and does believe" petitioner's home was a place where written instruments concerning the Communist Party were unlawfully possessed and used, the applicant said:

> "That this officer received information from two credible persons that the party named above has such books and records in his possession which are books and records of the Communist Party . . . That such information . . . has been confirmed by recent mailings . . . of pro-Communist material" (R. 71).

A joint affidavit of the "two credible persons," both Assistant Attorneys General of Texas, was attached to the application. Other than identifying the affiants, the affidavit does little more than state a belief, in language nearly identical to that used by the applicant, that petitioner's home was a place where writings concerning the Communist Party were unlawfully possessed, and asserts "information" about a mailing of material "identified as pro-Communist", and "other information received in the course of investigation that Stanford has in his possession the books and records of the Texas Communist Party" (R. 70).

The affiants did not allege personal knowledge of the mailing, let alone the nature of the material mailed; nor did they allege personal knowledge of facts to support the "information" that petitioner possessed books and records of the Texas Communist Party.

If one untangles these words, the affidavit, in attempting to present facts and circumstances, says that the affiants have been told by completely unidentified sources of un-

established reliability that petitioner, two weeks before the issuance of the warrant, had mailed materials which these sources "identified as pro-Communist." The second "fact or circumstance," somewhat more clearly perhaps, shows that sources of equally unestablished reliability told the affiants that petitioner had in his possession books and records of the Texas Communist Party. Both of the statements are hearsay.

In *Aguilar*, 378 U. S. at 114-115, the Court said:

> "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, Jones v. United States, 362 U. S. 257, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that [the crime had been committed], and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed (see Rugendorf v. United States, 376 U. S. 528), was 'credible' or his information 'reliable.' Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate', as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime' Giordenello v. United States [357 U. S. 480], 486; Johnson v. United States [333 U. S. 10], 14, or as in this case by an unidentified informant."

Again, as the Court said in *Jones* v. *U. S.*, 362 U. S. 257, 269 (1960), while probable cause can be established by hearsay evidence, the magistrate must be shown a "substantial basis for crediting the hearsay . . . presented."

It must be remembered in the present case that the two "credible" persons referred to in the application did not

themselves have personal knowledge of the "facts" upon which they based their beliefs. Even at the hearing below they testified only that they had been informed by unidentified sources of the "facts" upon which they based their beliefs (R. 58, 61). And as in *Aguilar*, the affidavit "not only 'contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein,' it does not even contain 'affirmative allegation' that the affiant's unidentified source 'spoke with personal knowledge.'" 378 U. S. at 113.

The "facts and circumstances" upon which this warrant issued are to this day known only to the persons who gave the "credible" affiants "information" of mailings of "pro-Communist material" and the possession of records of the Communist Party of Texas. The magistrate who issued the warrant in this case had absolutely no "facts and circumstances" presented to him under oath or affirmation, *Nathanson* v. *U. S.*, *supra*, at 44, 47 (1933), which would "warrant a prudent man in believing that the offense has been committed." *Henry* v. *United States*, *supra*, at 102.

In *Aguilar* there was at least some small basis for personal knowledge of the affiants—though it was not before the magistrate until a hearing was had upon the return of the warrant. Then it was discovered that the affiants' beliefs rested partially on a week's surveillance of the defendant. No such personal knowledge about the conduct of the petitioner was ever disclosed to the magistrate in this case.

The issuance of a search warrant cannot be based on such frivolous grounds. The basic reason for obtaining a warrant is

> "so that the evidence in the possession of the police may be weighed by an independent judicial officer, whose decision, not that of the police, may govern whether

liberty or privacy is to be invaded." *Jones* v. *U. S.*, 362 U. S. 257, 270-271 (1960).

The Constitutional requirement that a judicial officer be presented with "facts and information" to allow him to decide independently whether a warrant should issue cannot be satisfied by the pretense of supplying him with an affidavit which contains only twice-told rumors.

b. *The Application and Search Warrant Failed to Specify the Crime Charged*

The Suppression Law makes all of the following illegal: commission of an act intended to overthrow [etc.] the United States or Texas; advocacy or teaching such doctrine; conspiracy to commit such acts or teach such doctrines; support of any organization which engages in or advocates such acts. Thus, a warrant might issue under Section 9 for the seizure of material "showing" the commission of any of these crimes. But they are each quite separate, and the application and warrant must indicate the offense which has probably been committed. Section 9 itself contains this requirement. Nonetheless, the application and warrant were devoid not only of any notice of the particular provision of the Suppression Law supposedly violated, but compounded the defect by authorizing the search and seizure of evidence bearing on the cluster of crimes contained in the Control Law as well (R. 71-73).

The requirement of specificity permeates every phase of the criminal process. For example, an indictment must state the particular charge and the specific facts which amount to a violation of that charge. *U. S.* v. *Simmons*, 96 U. S. 360 (1877); *U. S.* v. *Hess*, 124 U. S. 483 (1888); *Smith* v. *O'Grady*, 312 U. S. 329 (1941). Similarly, State statutes which are so vague and indefinite in the description of the

conduct which they prohibit violate the Due Process Clause of the Fourteenth Amendment. See e.g., *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *Winters* v. *New York*, 333 U. S. 507 (1948); *U. S.* v. *Cardiff*, 344 U. S. 174 (1952); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278; *Baggett* v. *Bullitt*, 377 U. S. 360 (1961).

The case law dealing with the Fourth Amendment itself sets forth the same requirement of specificity. As early as 1806, in *Ex Parte Burford*, 3 Cranch 448, this Court held unconstitutional the imprisonment of a person pursuant to a warrant of commitment which used the following general language to describe the prisoner's "offense":

> "... John A. Burford ... is not of good name and fame, nor of honest conversation, but an evil doer and disturber ... the peace of the United States, so that murder, homicide, strifes, discords, and other grievances and damages, amongst the citizens of the United States, concerning their bodies and property, are likely to arise thereby ..." At 450-451.

The warrant was held illegal because it failed to state "*some good cause certain, supported by oath*" for its issuance. *Id.* at 453.

The requirement that the application for a search warrant specifically recite the crime probably committed has been implicit in many of this Court's decisions involving questions of probable cause, where it has been quite uniformly said that that requirement is to assure the likelihood that "*the* offense has been committed." *Carroll* v. *U. S.*, 267 U. S. 132, 161 (1925); *Dumbra* v. *U. S.*, 268 U. S. 435, 439 (1925); *Henry* v. *U. S.*, 361 U. S. 98, 102 (1959).

Also instructive is Lord Camden's opinion in *Entick* v. *Carrington and three other Kings Messengers*, 19 Howell's

State Trials 1029 (1765), the landmark decision of Anglo-American jurisprudence relating to searches and seizures. This Court, which has described *Entick* as a "monument to English liberty," said that its propositions "were in the minds of those who framed the Fourth Amendment to the Constitution . . ." *Boyd* v. *United States*, 116 U. S. 616, 626-627 (1886). In developing the history of the search warrant, Lord Camden said:

> "The case of searching for stolen goods crept into the law by imperceptible practice. No less a person than law by imperceptible practice . . . No less a person than my Lord Coke (4 Inst. 176) denied its legality: and, therefore, if the two cases resembled each other more than they do, we have no right, without an act of Parliament, to adopt a new practice in the criminal law, which was never yet allowed from all antiquity. Observe, too, the caution with which the law proceeds in this singular case.—*There must be a full charge upon oath of a theft committed. . . .*" (Emphasis added.) At 1067.

Thus, there has been a requirement of a "full charge," or a "good cause certain," before a search warrant may issue for at least two hundred years. This is not to suggest that all technical requirements of a pleading are required, but before one is subjected to an invasion of privacy and liberty he is entitled to be specifically informed of the crime to which the search is related.

The requirement that the application and search warrant specify a particular crime is important for several reasons. First, a particularized description of the things seized cannot have its intended cautionary effect unless the description is capable of being tested by reference to a crime. For example, a specification that the crime probably

committed is embezzlement suggests there is no need for the warrant to authorize a search for guns and ammunition. In short, specificity of the crime and description of the items to be seized test each other, and together insure no improper impairment of individual liberty.

Second, notification of the specific crime charged affords one whose privacy and liberty are at stake the opportunity to confer intelligently with an attorney in order to challenge the seizure or present a defense in the event of subsequent criminal proceedings. And as indicated by counsel in *Burford*, who cited Blackstone for this point, it is proper to require that a specific charge be reflected in the warrant to provide a record for review of the proceedings by an appellate court. 3 Cranch at 452-453.

c. *The Warrant Failed to Particularly Describe the Things to Be Seized*

The Fourth Amendment provides that warrants shall "particularly describ[e] . . . the . . . things to be seized." Elaborating on that requirement in *Marron* v. *United States*, 275 U. S. 192, 196 (1927), this Court said:

> "[This] requirement . . . prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

The warrant in the present case manifestly fails to particularly describe the things to be seized. Because it ordered seizure of "books, [etc.] concerning the Communist Party of Texas, and the operations of the Communist Party in Texas [which] are unlawfully possessed and used in violation of [the Control Law and the Suppression Law]," the officers were vested with unfettered discretion in its execution. Consequently, laying siege to petitioner's house for

five hours, they rummaged freely through his books, records and private correspondence, and seized any publications they capriciously deemed pro-Communist, including private papers and privileged correspondence with his attorneys.

The affiants here wielded in effect a general search warrant which invested them with carte blanche to seize whatever took their fancy. But as Mr. Justice Brennan pointed out in *Marcus* v. *Property Search Warrant*, 367 U. S. 717, 729:

> "The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression."

In *Entick* v. *Carrington*, *supra* at 1067, Lord Camden pointed out, regarding the execution of a search warrant, "The owner [of stolen goods] . . . must attend at the execution of the warrant, to shew them to the officer, who must see that they answer the description." This necessarily means they must be particularly described. It is dispiriting, therefore, that the law of England in 1765 required more of a search warrant than was afforded this petitioner. Rights recognized when the ducking stool and the whip were used should provide at least a minimum standard for Texas two hundred years later.

II.

Section Nine of the Suppression Law is unconstitutional.

a. Section Nine, on Its Face and as Applied in This Case, Violates the First and Fourteenth Amendments

Petitioner is frank to say that he cannot conceive of any circumstances or any procedure, no matter how elaborate, which would justify the seizure of his books and papers by State officials on the ground that they were pro-Communist, or pro- or anti- anything else. That is what the First Amendment and our free society are all about.[3]

Obscene publications are the only class of publications which can constitutionally be subjected to state suppression. *Roth* v. *U. S.*, 354 U. S. 476 (1957). The seizure of publications because of their political content has generally been condemned in Anglo-American society since the Eighteenth Century. See *Marcus* v. *Property Search Warrant*, 367 U. S. 717, 724-729 (1961).

This Court has condemned as inadequate procedures affording the owner of "obscene" books more protection than petitioner was given. *Marcus* v. *Property Search Warrant*,

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[3] See *Abrams* v. *United States*, 250 U. S. 616 (1919) (dissenting opinion); *Whitney* v. *California*, 274 U. S. 357 (1927) (concurring opinion); *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Herndon* v. *Lowry*, 301 U. S. 242 (1937); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Hague* v. *CIO*, 307 U. S. 496 (1939); *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *West Va. Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943); *Thomas* v. *Collins*, 323 U. S. 516 (1945); *Terminiello* v. *Chicago*, 337 U. S. 1 (1949); *Talley* v. *California*, 362 U. S. 60 (1960); *Shelton* v. *Tucker*, 364 U. S. 479 (1960); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293 (1961); *Cramp* v. *Bd. of Public Instruction*, 368 U. S. 278 (1961); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539 (1963); *Wright* v. *Georgia*, 373 U. S. 284 (1963).

supra; A Quantity of Books v. *Kansas*, 378 U. S. 205 (1964). *Marcus* declared that if publications were to be seized as obscene, the State, because of the nexus between books and the exercise of free expression, must provide a method having greater safeguards for individual liberty than are required to seize gambling paraphernalia or other contraband. 367 U. S. at 730-731. *A Quantity of Books*, 378 U. S. at 212.

The procedure struck down in *Marcus* required an adversary hearing within twenty days after seizure under warrant, to determine whether the books were obscene. The Kansas procedure was similar. The holding in both cases was that seizure of allegedly obscene books *before* an adversary hearing was unconstitutional. What then can one say about the seizure on an ex parte warrant, of petitioner's books (both his own and his stock-in-trade) on the ground they were pro-Communist. We do not suggest that a hearing prior to seizure would have cured the defects in this case; we have already denied any power in the state to interfere with petitioner's possession or sale of the books in any way.[4] The mere thought of what such a hearing would consist of compels its immediate rejection—at least at this time in this nation.

But what Texas has done in this case is more shocking than the trial for political conformity posed and rejected above; for Texas has in effect declared petitioner guilty of heresy without any trial whatever. In a secret proceeding, on facts undisclosed even to the court, the State has found that petitioner possessed "pro-Communist" material and assigned State officials to invade his home to remove and suppress the heretical literature.

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[4] Except, of course, by way of any commercial liabilities he might incur.

Any statute which authorizes that kind of practice cannot exist side by side with the Constitution. If Section 9 is not struck down smartly, then it will be the Constitution which will have fallen.

b. Section Nine, on Its Face and as Applied in This Case, Violates the Fourth, Fifth and Fourteenth Amendments

The seizure of petitioner's books and papers was made under a warrant issued pursuant to Section 9 of the Suppression Law, which provides for the seizure of "books [etc.] *showing* that a person or organization is violating or has violated any of the provisions of this Act." (Emphasis added.) The provision is unconstitutional on its face, for its authorizes issuance of a warrant for a purpose prohibited by the Fourth and Fifth Amendments, which apply to the State through the Fourteenth. *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Malloy* v. *Hogan*, 378 U. S. 1 (1964).

> "[P]rivate papers desired by the Government merely for use as evidence may not be seized, no matter how lawful the search which discovers them." *Abel* v. *United States*, 362 U. S. 217, 234-235 (1960).

This Court has not previously considered a statute so bold in its pronouncement of contempt for the liberties secured by the Fourth and Fifth Amendments. In *Boyd* v. *United States*, 116 U. S. 616 (1886), a less offensive statute than the present one in Texas was condemned because its effect was "tantamount to compelling" the production of books and papers which under the statute might be examined and used as evidence by the United States. Equating this to a seizure by warrant, this Court found the Statute violated both the Fourth and Fifth Amendments. "[W]e have been unable to perceive that the seizure of a man's

private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms." At 633.

Later cases have sought to distinguish between papers which were "instrumentalities" of a crime and those which were merely evidence of a crime. Contracts and bills "of no pecuniary value, but of evidential value" have been held protected from seizure, *Gouled* v. *United States*, 255 U. S. 298 (1921); bills and ledgers of one who had unlawfully manufactured whiskey during Prohibition were so closely related to the conduct of unlawful business that they were deemed used to carry on the criminal conduct and so were not protected, *Marron* v. *United States*, 275 U. S. 192 (1927); books of account and other papers including private records, even though "intended to be used to solicit orders for liquor in violation of the [Prohibition] Act . . . were in themselves unoffending" and protected against seizure, *United States* v. *Lefkowitz*, 285 U. S. 452, 465 (1932); draft cards not the defendant's own were instrumentalities so were not protected. *Harris* v. *United States*, 331 U. S. 145 (1947).

Never have materials of the kind taken in the present case been deemed to be instrumentalities of crime. While state officials may long for the power to seize books that have not lost the protection of the First Amendment, the Constitution forbids it; for if their possession is not unlawful, that is, if they are neither contraband nor the fruits or implements of crime, they cannot be more than evidence of crime. Though there are nations where possession or sale of publications unpalatable to the government is deemed criminal, the United States is not one of them.

III.

Articles 6889-3 and 6889-3A have been superseded by Federal legislation.

The search warrant in question here was issued under Section 9 of Article 6889-3A on the ground that petitioner possessed and used material in violation of Article 6889-3 (Control Law) and Article 6889-3A (Suppression Law) (R. 72-73). These statutes, which attempt to regulate the Communist Party of the United States and its local affiliates, and their activities, have been superseded by federal law and are therefore void.

The Control Law provides, in brief, for the compulsory registration of "Communists" and members of "Communist Front Organizations", as both are defined in the statute (Secs. 1 and 3), who remain within the state for five consecutive days (Sec. 4A). The "Communist Party" itself, and any "Communist Front Organization," must also register if they have any members within the state (Sec. 4C). Failure to register is a felony which may be punished by a fine of from $1,000 to $10,000, and by imprisonment for not less than two or more than ten years (Sec. 4D). The Law also makes it a crime to sabotage or destroy any property "used in connection with national defense" (Sec. 5). The names of "Communists" or nominees of the "Communist Party" may not be printed upon any election ballot (Sec. 6), nor may a "Communist" or a knowing member of a "Communist Front Organization" hold any nonelective office for the state or any of its subdivisions (Sec. 7).

The Suppression Law provides that the Communist Party and all its related organizations are illegal, as are any organizations which "advocate, abet, advise, or teach . . . any activities intended to overthrow, destroy, or alter, or

to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence" (Sec. 2); any such organization found within the state forfeits all its property to the state (Sec. 2). The Law also prohibits several varieties of the crime known as sedition against the United States and Texas (Sec. 5). Section 9, very much in issue in this case, provides for the issuance of search warrants for the purpose of "showing" a violation of the Suppression Law.

The similarity of the Texas statutes to the federal statutes in the same area is perfectly obvious. They are virtual copies, though something less than skillfully drawn copies. The Control Law, adopted in 1951, is fashioned after the Subversive Activities Control Act of 1950 (50 U. S. C. §781 *et seq.*). The Suppression Law, adopted in 1954, closely follows The Communist Control Act of 1954 (50 U. S. C. §841 *et seq.*) and the Smith Act of 1940 (18 U. S. C. §2385).

The decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1956), leaves no doubt that seditious activity directed against the Federal government is the exclusive province of the United States. State statutes which purport to regulate such activities are unenforceable. There is no longer any dispute about this proposition.

The statute involved in the *Nelson* case was the Pennsylvania Sedition Act. Pa. Penal Code §207, 18 Purdon's Pa. Stat. Ann. §4207. This statute prohibited seditious activities against the United States and the State of Pennsylvania. Nelson was convicted under that statute for sedition against the United States. This Court, affirming the decision of the Pennsylvania Supreme Court which reversed the conviction, found that the federal legislation was so pervasive that it had occupied the field to the exclusion of

parallel state legislation, that the dominant interest of the Federal government precluded state intervention, and that administration of state statutes would conflict with the operation of the federal plan. 350 U. S. at 509. Thus, the portions of the Control Law and Suppression Law which proscribe sedition against the United States by the Communist Party or anyone else (Suppression Law, §§2 and 5) are superseded and therefore invalid and unenforceable.

But *Nelson* teaches us more than was held on its exact facts. Its general proposition states that the test of supersession is contained in a threefold formula: (1) whether the scheme of federal regulation is so pervasive that it can reasonably be inferred that Congress left no room for the states to legislate, 350 U. S. at 502; (2) whether the state statutes concern a field in which the federal interest is so dominant that the federal system must be presumed to preclude enforcement of state laws on the same subject, 350 U. S. at 504; (3) whether enforcement of the state laws presents a serious danger of conflict with the administration of the federal program, 350 U. S. at 505.

Furthermore, any doubt about the scope of *Nelson* is set to rest in this particular case where it is the Communist Party and its activities which are the specific subject of the Texas laws. Given the panoply of federal legislation directed explicitly against the Communist Party, the supersession of parallel state legislation cannot be gainsaid.[5] And the record in this case shows that it is petitioner's alleged affiliation specifically with the Communist Party and its activities which are at issue. This

[5] Which is not to say that all state legislation which regulates the Communist Party is invalid. Cf. *Adler* v. *Board of Education*, 342 U. S. 485 (1952); *Lerner* v. *Casey*, 357 U. S. 468 (1958); *Beilan* v. *Board of Education*, 357 U. S. 399 (1958), all of which involve state employees, not private citizens.

is clear from the search warrant (R. 72-73), the application for the warrant (R. 71-72), and the affidavit in support of the application (R. 70).

1. The Pervasiveness of Congressional Legislation

Congress has enacted exhaustive legislation involving comprehensive and detailed regulation of the Communist Party, and its activities. In addition to the Smith Act, *supra,* the Subversive Activities Control Act, *supra,* and the Communist Control Act, *supra,* Congress has also sought to regulate Communist Party activity by the following legislation: Immigration and Nationality Act, 8 U. S. C. §§1182, 1251, 1327, 1424, 1451; National Defense Education Act of 1958, 20 U. S. C. §581; Internal Revenue Code, 26 U. S. C. §3121; Postal Service, 39 U. S. C. §4008; Social Security Act, 42 U. S. C. §410; Temporary Unemployment Compensation Act of 1958, 42 U. S. C. §1400i; National Science Foundation Act of 1950, 42 U. S. C. §1874. So pervasive is this legislation that there is literally no room left to the states to enact parallel legislation. *Rice* v. *Sante Fe Elevator Corp.*, 331 U. S. 218, 230 (1947); *Pennsylvania* v. *Nelson, supra,* at 502. Both the simple numerical quantity of statutes which have been adopted by the Congress, and the breadth of their application over the most diverse fields of interest, easily support the conclusion that this element of the tripartite *Nelson* criteria is satisfied.

2. The Dominant Federal Interest

Since the *Nelson* decision, distinctions have been drawn between "subversive" activities directed at the United States and those directed solely at the individual states, and it has been argued that state regulation of subversive activities directed against themselves is not superseded by

Federal statutes. This theory, if it has any vitality at all,[6] collapses when applied to the activities of the Communist Party. The activities of the Communist Party are directed primarily against the Federal government and involve political issues which are the predominant concern of the United States. Congress has made this clear time and again.

In enacting the Internal Security Act of 1950 Congress found that the Communist movement was a worldwide revolutionary movement (50 U. S. C. §781(1)); that the direction and control of the world Communist movement was vested in and exercised by the Communist dictatorship of a foreign country (50 U. S. C. §781(4); that Communist action organizations (as defined in the Act) are in fact consistent elements of the worldwide Communist movement (50 U. S. C. §781(6)); that individuals who knowingly and wilfully participated in the world Communist movement in effect had repudiated their allegiance to the United State and had transferred their allegiance to the foreign country which directed and controlled the world Communist movement (50 U. S. C. §781(9)); that the Communist network in the United States was inspired and controlled largely by foreign agents who come into this country ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions and in similar capacities (50 U. S. C. §781(12)); and that numerous aliens were in the subversive classes in this

[6] The overthrow of a State government by an organization such as the Communist Party would necessarily involve the taking over of railway lines, interstate highways, airports, telephone exchanges, broadcasting stations, post offices, port facilities where they existed and would involve the suspension of Federal laws and of the protection of United States citizens. In the instant case, the overthrow of Texas would also involve control over part of the United States border with a foreign nation and over United States military bases.

country (50 U. S. C. §781(13)). The term "Communist-action organization" was defined as being substantially directed, dominated or controlled by the foreign government or foreign organization controlling the world Communist movement (50 U. S. C. §782(3)).

In enacting the Communist Control Act of 1954, Congress found that the Communist Party acted as an instrumentality of a hostile foreign power (50 U. S. C. §841), and that the term "Communist Party" meant the Communist Party of the United States, the Communist Party of any state, and any unit or subdivision of any such organization (50 U. S. C. §843).

These Congressional findings acknowledge that the regulation and control of the Communist Party of the United States and its affiliates in the individual states are intimately associated with international affairs, foreign policy, and the common defense, areas within the exclusive domain of the Federal government.[7] Activities of the Communist Party do not become subject to state regulation merely by artificially characterizing them as being directed against the individual states.[8]

The state courts have recognized this dominant federal interest. For example, in *Commonwealth* v. *Gilbert*, 334

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[7] The Control Law acknowledges the same fact. Section 2 defines the Communist Party as "any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which in any manner advocates, or acts to further, the world Communist movement." Further, the preamble to this Law states that "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control." See also Section 1 of the Suppression Act.

[8] At the hearing below, the State's Attorney revealed the artificial character of the state's position by interjecting, "It is a crime to advocate the overthrow of the United States . . ." (R. 41).

Mass. 71, 134 N. E. 2d 13 (1956), the defendant was indicted for conspiring to overthrow the government of Massachusetts. In quashing the indictment, the court, through Chief Justice Qua, speaking to the elements of the crime alleged in the indictment and bill of particulars, said:

"These include membership in the Communist Party, advocacy of the principles of Marxism-Leninism and of violent overthrow of the government of the Commonwealth, the holding of 'cell meetings' and 'secret procell' meetings to study and promulgate Communist literature and the methods to be used for the victory of Communism, including the idea that the working class must shatter the State machinery, that the party seize control, destroy parliamentary government, and establish the dictatorship of the proletariat, and to learn the technique and methods for violent revolution. It is alleged that at such meetings a coconspirator would advocate that the workers of the United States must be armed to carry out an armed revolt in the United States, that the government should be overthrown by force to establish the dictatorship of the proletariat and that the defendant was to assist in raising money to further the objects of the Communist Party. Although all these things and more in the same line are specified as pertaining to the conspiracy to overthrow the government of this Commonwealth, it is evident that they are the familiar paraphernalia of Communist agitation for the overthrow of government in general, and cannot be directed separately and exclusively against the government of this Commonwealth. They fall within the purview of the Smith Act which by its terms is directed against propaganda for the overthrow not only of the government of the United States, but of the governments of the States as well. If the field in which was set the indictment in

Commonwealth of Pennsylvania v. *Nelson* has been exclusively occupied by the Federal government, it seems an inescapable deduction that the present indictment also invades the exclusive Federal field." 134 N. E. 2d, at 15-16.[9]

Furthermore, the Texas statutes themselves contain evidence that they were designed to trespass in areas for which the United States has sole responsibility. The preamble to the Control Law states:

"Since the State of Texas is the location of many of the Nation's largest and most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Texas is a most probable target for those who seek by force and violence to overthrow Constitutional Government, and is in immjnent danger of communist espionage and sabotage."

It is only realistic to recognize that, so long as the fortunes of the Communist Party are closely tied to a foreign nation which is antagonistic to the United States, the undivided national interest requires the central government to have the paramount authority in determining the posture to be taken towards the Party.

Thomas Jefferson capsulated this idea of the centrality of power where it is the national interest which is at stake:

"My own general idea was, that the States should severally preserve their sovereignty in whatever concerns

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[9] Accord: *Braden* v. *Commonwealth*, 291 S. W. 2d 843 (Ky. 1956); *Commonwealth* v. *Dolsen*, 183 Pa. Sup. 339; *Albertson* v. *Millard*, 345 Mich. 519; *State* v. *Jenkins*, 236 La. 300, 107 So. 2d 648 (1958); *State* v. *Levitt et al.*, Monroe (Ind.) Circuit Court, Nos. 629, 630 (New York Times, March 21, 1964).

themselves alone, and that whatever may concern another State, or any foreign nation, should be made a part of the federal sovereignty." Memoir, Papers of Thomas Jefferson (1829), vol. 2, p. 230, letter to Mr. Wythe.

3. The Need for a Uniform National System of Regulation

Matters which by their nature are national, or admit only of one uniform system of regulation, require the exclusive legislation of Congress. *Cooley* v. *Board of Wardens*, 53 U. S. (12 How.) 299 (1851); *Hines* v. *Davidowitz*, 312 U. S. 52 (1941). Control of the Communist Party and its affiliates is an area which requires such uniform policies, standards and procedures. See *Pennsylvania* v. *Nelson*, 350 U. S. 497, 505-09 (1956).

In *Nelson*, the Court set out at length the danger of conflict between the state statute involved there and its federal counterpart, the Smith Act. The explication is formidable and we will not presume to improve upon it; we only rely upon it. We do, however, add this observation. All that was involved in *Nelson* was one state statute which undertook to prohibit the crime commonly called sedition, but that was enough to support the Court's conclusion that it provided ample danger of conflict with federal enforcement of the Smith Act. But in this case a far more elaborate web of legislation is involved and the danger of conflict described in *Nelson* is augmented many times over by virtue of the spidery patterns indiscriminately drawn by the sweeping statutes in this case.

One example of potential conflict which is particularly relevant in this case is the decision whether it is preferable to allow the American Communist Party and its affiliates, well infiltrated by government agents, to operate with a relative degree of freedom or to undertake a vigorous pro-

gram of suppression which will inevitably drive Party workers underground. This issue should be resolved by a central policy-making body on a national level.

Moreover, this case provides a nice conflict between the complete absence of explicit procedural safeguards under the Texas statutes and the elaborate procedures provided by Congress to insure a fair degree of procedural due process within a statute whose constitutionality is hotly disputed.[10]

Lack of uniformity in the instant case results in still other inconsistencies and conflicts which blunt the aims of Congress. Section 3 of the Texas Suppression Law provides only that registration under the Texas Communist Control Law shall not be admissible in any Suppression Law proceeding but does not exclude evidence of registration under Federal statutes, although Congress did not intend that the fact of registration be used in any criminal prosecution. 50 U. S. C. §783(f).

Section 6 of the Suppression Law provides that no person convicted of any violation of that Law shall ever be entitled to suspension or probation of sentence, a particularly vindictive feature absent from any of the relevant federal legislation. The Texas statutes thus go beyond the Federal statutes and impose harsher penalties than Congress desired.

"When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and

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[10] See *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961). Compare *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board*, No. 65, October Term, 1964; *American Committee for Protection of the Foreign Born* v. *Subversive Activities Control Board*, No. 44, October Term, 1964; *Communist Party* v. *United States*, 331 F. 2d 807 (CADC, 1963), cert. den. 377 U. S. 968.

a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & Western Carolina R. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604 (1915). See *Hines* v. *Davidowitz, supra,* at 66-67; *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265 (1929).

Another consequence of the competing legislation is the prospect that individuals will be subject to prosecution in different jurisdictions for the same conduct,[11] and subject, therefore, to litigation involving varying procedural and evidentiary rules and standards of proof, as is the petitioner here in fact. Even if uniform statutory language in the various state acts be assumed, state courts will apply varying interpretations to the provisions of their own Communist control statutes. As this Court stated in another context, "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490-491 (1953). This Court stated in *Nelson*: "Without compelling indication to the contrary, we will not assume that Congress intended to permit the possibility of double punishment." *Pennsylvania* v. *Nelson, supra,* at 509-10.

Respondent will, of course, in meeting this supersession argument, rely on *Uphaus* v. *Wyman*, 360 U. S. 72 (1959), as it did in its Response to the petition for a writ of certiorari, p. 16: "We believe that the intent of the Nelson case is explained in the Uphaus case, and that this intent is not to arbitrarily strike down all of the statutes of the various states involving subversion."

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[11] *Bartkus* v. *Illinois*, 359 U. S. 121 (1959); *Abbate* v. *United States*, 359 U. S. 187 (1959).

It would be too ingenuous to deny that *Uphaus* and *Nelson* are in considerable conflict. There are, of course, distinctions to be drawn between the two cases. For example, *Uphaus* involved only investigation of so-called subversive activity within New Hampshire, not a prosecution as in *Nelson*. *Uphaus* involved only "the right of the State to require the production of corporate papers of a state-chartered corporation in an inquiry to determine whether corporate activity is violative of state policy" (360 U. S. at 77), a question not present in *Nelson*. However, we believe that the Court must directly confront the statement in *Uphaus* that "the opinion [in *Nelson*] made clear that a State could proceed with prosecutions for sedition against the State itself . . ." 360 U. S. at 76.

Nelson, however, said nothing of the kind. It merely emphasized that it was exercising its responsibility to decide the case only on its particular facts. Nonetheless, *Uphaus* proceeded on this mistaken interpretation of *Nelson* and justified the New Hampshire investigation, at least in part, on the ground that the state was not pre-empted from the field. Consequently, the two decisions can be interpreted to leave undecided the supersession question raised in the case at bar.

We have set out the reasons for finding that the Texas statutes have been superseded. If, however, it is the opinion of the Court that *Uphaus* bars that conclusion, then we respectfully urge that it be reconsidered and overruled.[12]

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[12] *Uphaus* should be overturned as well for the independent reason that it is inconsistent with prior and subsequent decisions of this Court in the area of First Amendment freedoms, including *NAACP* v. *Alabama*, 357 U. S. 449 (1958); *Bates* v. *Little Rock*, 361 U. S. 516 (1960); *Talley* v. *California*, 362 U. S. 60 (1960); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U. S. 539 (1963); *Baggett* v. *Bullitt*, 377 U. S. 360 (1964). See Brief of the American Civil Liberties Union, *amicus curiae*, in *Dombrowski et al.* v. *Pfister et al.*, No. 52, Oct. Term, 1964.

In conclusion, a word can properly be said here about the inevitable claim of "States' rights" that will be raised in opposition to the application of the Supremacy Clause in this case. Just as there are limitations upon the powers of the federal government with regard to the states, so are there limitations upon the scope of the powers of the states. The Tenth Amendment cuts both ways, for it reserves to the states only "the powers not delegated to the United States by the Constitution. . . ." The powers involved in this case include several that are expressly delegated by the Constitution to the United States. They include its responsibility over foreign affairs (Art. I, Sec. 8; Art. II, Sec. 2),[13] the common defense (Art. I, Sec. 8, Clause 1), and the guarantee to every state of a republican form of government (Art. IV, Sec. 4). For the states to infringe on these powers is to cut away the foundation of our federal system.[14]

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[13] See for example, *Hauenstein* v. *Lynham*, 100 U. S. 483 (1880); *Missouri* v. *Holland*, 252 U. S. 416 (1920); *U. S.* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304 (1936).

[14] Since the decision in *Nelson*, Congress has declined to reverse the effect of this Court's ruling in that case, although numerous bills for such purpose have been considered in both Houses. This reinforces the view that Congress intended to preempt this area.

H. R. 3, 85th Cong., 2d Sess. (1958), which provided that Federal sedition legislation did not supersede state sedition statutes, was passed by the House on July 17, 1958. 104 Cong. Rec. 14162 (1958). The Senate did not act on this bill.

S. 654, 85th Cong., 2d Sess. (1958), the Senate version of H. R. 3, was intended by its supporters to expressly create in the states the right to enforce their sedition statutes against the Communist Party and others, and thus to nullify *Nelson*. S. Rep. No. 2250, 85th Cong., 2d Sess. 1 (1958). The bill was returned to committee late in the session, and not acted upon again. 104 Cong. Rec. 18928 (1958).

S. 2646, 85th Cong., 2d Sess. (1958), the Jenner-Butler bill, which would have had the same effect as S. 654, was tabled by the Senate on August 20, 1958. 104 Cong. Rec. 18686 (1958).

[*Footnote continued on page 35*]

CONCLUSION

Sam Houston, twice Governor of the Republic of Texas, in referring to the battle of San Jacinto, once wrote:

> "On that well fought field Texas Independence was won . . . But the sublimity of the spectacle is lost unless the eye has a scope for a wider field of vision."

First and last, the petitioner relies on the Constitution of the United States; but in the sense Sam Houston surely would have intended it, Texas has a heritage of its own which makes the seizure of library books in a man's home seem especially small.

As Americans, the residents of Texas share the glory of the American Revolution, but as Texans they know their people walked a second time down the bloody road of revolution—past Gonzales where the first shot was fired. Past the Goliad Massacre where James Fannin and 342 of his men, prisoners of war, were murdered. Past San Antonio

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[*Footnote continued from page 34*]

The Congressional debates upon these bills indicate that those Congressmen who had proposed them thought that the *Nelson* decision had precluded the states from prescribing penalties for seditious activities directed against either the Federal government or state governments by the Communist Party or anyone else. Their purpose was to overrule the Court's decision. 104 Cong. Rec. 18678, 18927 (1958) (remarks of Senator Eastland). The implication is clear that Congress, in declining to pass these bills, intended that the *Nelson* decision, as understood by its members, should stand unimpaired and that state legislation relating to activities by the Communist Party should not be revalidated. See *Provost* v. *United States*, 269 U. S. 443, 457-58 (1926); *Manhattan Properties, Inc.* v. *Irving Trust Co.*, 291 U. S. 320, 336 (1934); *United States* v. *Elgin, Joliet & Eastern Ry. Co.*, 298 U. S. 492, 500 (1936); *Missouri* v. *Ross*, 299 U. S. 72, 75 (1936); *Electric Storage Battery Co.* v. *Shimadzu*, 307 U. S. 5, 14 (1939). In this instance, Congress not only remained silent after a judicial construction, but defeated proposed legislation whose specific purpose was to overturn that construction as understood by Congress.

where 27 year old Attorney at Law, Colonel William Barret Travis, Juan Abamillo, Jim Bowie, Englishmen, Scotsmen, Irishmen, men from 18 American states, and an immigrant from Denmark, Charles Zenco, first had a fandango to the tunes of former Congressman Davy Crockett's fiddle and big John McGregor's bagpipes, and then, along with a Negro remembered only as "John", entered the walls of the Alamo to make their stand and die. Finally, there was victory at San Jacinto where General Sam Houston, lawyer, protected the civil rights of the hated Santa Anna.

On March 2, 1836, at Washington on the Brazos River, the Republic of Texas gave the world a Declaration of Independence which magnificently demonstrated the right of a people, even unpopular people such as the Texans were, to express their views against the established government. And this they did for themselves and future generations of Texans in the face of Santa Anna's earlier decree, " . . . serán juzgados y castigados como piratas"—the Texans shall be judged and treated like pirates.

Today, the ultimate in the right of dissent by a person popular or unpopular, is written into the present Constitution of the State of Texas (1876) as contained in Section 2 of Article I of the Texas Bill of Rights. It is an echo of the Texas Revolution and it reads:

> "All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of the republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform, or abolish their government *in such manner as they may think expedient.*" (Emphasis supplied.)

This business of playing havoc with a mail order bookstore in a citizen's private residence under a vaguely worded search warrant, based on an application and affidavit which did little more than spread a rumor, and where no specific violation or any crime was alleged, was as contrary to the ways of a civilized state as it was to the Constitution.

It was tyranny.

It was a monkey-see, monkey-do reminder of a dictatorship.

It was unworthy of the great State of Texas.

It cannot stand before the Constitution of the United States of America.

And it was an abandonment of the challenge in Ramsey Yelvington's moving play about the Alamo, *A Cloud of Witnesses*. In the final scene, the dead defenders walk out on the stage and tell the audience why they chose to die:

> "Only this we know. We died there and from our dust the mammoth thing Freedom received a forward thrust. The reverberations we continued are something to which Man may respond or not respond . . "

For these reasons the judgment of the court below should be reversed.

Respectfully submitted,

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APPENDIX

ART. 6889-3. TEXAS COMMUNIST CONTROL LAW

Communist defined

Section 1. A "Communist" is a person who:

(A) Is a member of the Communist Party, notwithstanding the fact that he may not pay dues to, or hold a card in, said Party; or

(B) Knowingly contributes funds or any character of property to the Communist Party; or

(C) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence; or

(D) Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites.

Definition of Communist Party

Sec. 2. The "Communist Party" is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which

in any manner advocates, or acts to further, the world Communist movement.

Definition of Communist Front Organization

Sec. 3. A "Communist Front Organization" is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement.

Registration

Sec. 4. (A) Each person remaining in this State for as many as five (5) consecutive days after the effective date of this Statute, who is a Communist or is knowingly a member of a Communist Front Organization, shall register with the Department of Public Safety of the State of Texas on or before the fifth consecutive day that such person remains in this State, and so long as he remains in this State shall reregister annually with said Department between the first and fifteenth days of January.

(B) Such registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the State of Texas, sources of income, place of birth, places of former residence, and features of identification, including fingerprints, of the registrant; organizations of which registrant is a member; names of persons known by registrant to be Communists or members of any Communist Front Organization; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute.

(C) Each and every officer of the Communist Party and each and every officer of Communist Front Organizations,

knowing said Organizations to be Communist Front Organizations, shall register or cause to be registered said Party or Organizations with the Department of Public Safety, if said Party or Organizations have any members who reside, permanently or for a period of time more than thirty (30) days, in the State of Texas. Such registration shall be under oath and shall include the name of the organization, the location of its principal office and of its offices and meeting places in the State of Texas; the names, real and assumed, of its officers; the names, real and assumed, of its members in the State of Texas and of any person who has attended its meetings in the State of Texas; a financial statement reflecting receipts and disbursements and by whom and to whom paid; and any other information requested by the Department of Public Safety which is relevant to the purposes of this Statute. Such registration shall be made within thirty (30) days after the effective date of this Statute, and thereafter at such intervals as are directed by the Department of Public Safety.

(D) Failure to register as herein required, or the making of any registration which contains any material false statement or omission, shall constitute a felony and shall be punishable by a fine of not less than One Thousand Dollars ($1,000) or more than Ten Thousand Dollars ($10,000), or by imprisonment of not less than two (2) or more than ten (10) years, or by both.

(E) Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the records shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this State, of the United States or of any State or Territory of the United States. At the discretion of the Department of Public Safety, such records may also be open for inspection by the general public or by any member thereof.

Sabotage

Sec. 5. It shall be a felony, punishable by a term in the penitentiary of not less than two (2) nor more than twenty (20) years for any person, with the intent to injure the United States, the State of Texas, or any facilities or property used for national defense, to sabotage or destroy, or to attempt to sabotage or destroy, any property, facility or service that is being used or is to be used in connection with national defense. Should any loss of life occur by reason of such sabotage or destruction, or by reason of any attempted sabotage or destruction of such character, the person committing or attempting to commit same shall be guilty of murder with malice aforethought and shall be punished by death, or by confinement in the penitentiary for life or for any term of years not less than two (2). The word "sabotage" as used herein means the wilful and malicious infliction of physical damage or injury to property. The penalty herein provided shall be cumulative of all other penalties which might be imposed by virtue of the fact that the acts constituting an offense under this Statute also constitute separate offenses under other laws of this State.

Elections

Sec. 6. The name of any Communist or of any nominee of the Communist Party shall not be printed upon any ballot used in any primary or general election in this State or in any political subdivision thereof.

Public office

Sec. 7. No person may hold any nonelective position, job or office for the State of Texas, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the State of Texas, or of any political subdivision there-

of, where reasonable grounds exist, on all of the evidence, for the employer or other superior of such person to believe that such person is a Communist or a knowing member of a Communist Front Organization.

Enforcement

Sec. 8. The Attorney General of the State of Texas, all District and County Attorneys, the Department of Public Safety, and all law enforcement officers of this State shall each be charged with the duty of enforcing the provisions of this Statute.

Partial unconstitutionality

Sec. 9. If any section, subparagraph, sentence, phrase, part or application of this Statute shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions hereof, and the Legislature here declares that it would have enacted such remaining portions notwithstanding any holding of unconstitutionality with respect to any other portions of this Statute.

Cumulative character

Sec. 10. This Statute is cumulative of all existing laws and does not repeal any such laws.

Short title

Sec. 11. This Act may be cited as the "Texas Communist Control Law." Acts 1951, 52nd Leg., p. 10, ch. 8.

Historical Note

The Act contained the following preamble: "There exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control

is to be brought about by aggression, force and violence, such as is now occurring in the Republic of Korea, and is to be accomplished in large part by infiltrating tactics involving the use of fraud, espionage, sabotage, terrorism and treachery. Since the State of Texas is the location of many of the Nation's largest and most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Texas is a most probable target for those who seek by force and violence to overthrow Constitutional Government, and is in imminent danger of Communist espionage and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the State of Texas and in the United States of America. The world Communist movement, temporarily halted by American dead, constitutes a clear and present danger to the citizens of the State of Texas. Therefore,"

ART. 6889-3A. SUPPRESSION OF COMMUNIST PARTY AND RELATED ORGANIZATIONS

Legislative finding and declaration

Section 1. Upon evidence and proof already presented before this Legislature, Congress, the courts of this State, and the courts of the United States, it is here now found and declared to be a fact that there exists an international Communist conspiracy which is committed to the overthrow of the government of the United States and of the several States, including that of the State of Texas, by force or violence, such conspiracy including the Communist Party of the United States, its component or related parts and members, and that such conspiracy constitutes a clear and present danger to the government of the United States and of this State.

Illegality of Communist Party and component or related organizations; dissolution; forfeiture of charter; property, etc.

Sec. 2. The Communist Party of the United States, together with its component or related parts and organizations, no matter under what name known, and all other organizations, incorporated or unincorporated, which engage in or advocate, abet, advise, or teach, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, are hereby declared to be illegal and not entitled to any rights, privileges, or immunities attendant upon bodies under the jurisdiction of the State of Texas or any political subdivision thereof. It shall be unlawful for such Party or any of its component or related parts or organizations, or any such other organization, to exist, function, or operate in the State of Texas. Any organization which is found by a court of competent jurisdiction to have violated any provisions of this Section, in a proceeding brought for that purpose by the District Attorney, Criminal District Attorney, or County Attorney, shall be dissolved, and if it be a corporation organized and existing under the laws of this State or having a permit to do business in this State, its charter or permit shall be forfeited, and, whether incorporated or unincorporated, all funds, records, and other property belonging to such Party or any component or related part or organization thereof, or to any such other organization, shall be seized by and forfeited to the State of Texas, to escheat to the State as in the case of a person dying without heirs. All books, records, and files of any such organization shall be turned over to the Attorney General.

Registration not evidence

Sec. 3. The fact of the registration of any person under the provisions of Article 6889-3 of the Revised Civil Statutes of Texas as an officer or member of any Communist organization shall not be received in evidence against such person in any proceeding for any alleged violation of this Act.

Prima facie evidence

Sec. 4. As to any particular organization, proof of its affiliation with a parent or superior organization, inside or outside of this State, which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, shall constitute prima facie evidence that such particular organization engages in or advocates, abets, advises, or teaches, or has as a purpose the engaging in or advocating, abetting, advising, or teaching of, the same activities with the same intent.

Unlawful acts

Sec. 5. It shall be unlawful for any person knowingly or willfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances to constitute a clear and present danger to the security of the United States, or of the State of Texas, or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any of the above acts; or

(4) Assist in the formation of, or participate in the management of, or contribute to the support of, or become or remain a member of, or destroy any books or records or files of, or secrete any funds in this State of the Communist Party of the United States or any component or related part or organization thereof, or any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach, any activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction, or alteration of, the constitutional form of the government of the United States, or of the State of Texas, or of any political subdivision of either of them, by force or violence, knowing the nature of such organization.

Punishment for violations

Sec. 6. Any person who shall violate any of the provisions of Section 5 of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than Twenty Thousand ($20,000.00) Dollars, or imprisoned not less than one (1) year nor more than twenty (20) years in the State penitentiary, or may be both so fined and imprisoned. Provided that nothing in this Act shall be construed to repeal any part of Articles 83, 84, and 85 of the Penal Code of the State of Texas, relating to treason, nor any part of Articles 153 and 155 of the Penal Code of the

State of Texas, relating to seditious writings and language; and provided further, that no person convicted of any violation of this Act shall ever be entitled to suspension or probation of sentence by the trial court.

Disqualification to hold office, etc.

Sec. 7. Any person who shall be convicted finally by a court of competent jurisdiction of violating any of the provisions of this Act shall from the date of such final conviction automatically be disqualified and barred from holding any office, elective or appointive, or any other position of profit, trust, or employment with the government of the State of Texas or any agency thereof, or of any county, municipal corporation, or other political subdivision of the State.

Injunctions

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that such proceedings shall have priority over other cases in settings for hearing; provided further, that no such proceeding shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such

proceeding, and an affidavit of such notice filed with the application for such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

Search warrants

Sec. 9. A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence

obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial, save and except those arising under this Act.

Enforcement of law

Sec. 9a. The Internal Security Section of the Texas Department of Public Safety shall assist in the enforcement of the provisions of this Act, and for such purpose said Department may employ and pay the salaries and wages of such personnel and make such capital outlay purchases as it may deem necessary and pay necessary expenses, including but not limited to travel expenses (including automobile maintenance), all necessary operating expenses (including seasonal help), wages and salaries of employees, and make any and all other expenditures whatsoever necessary for the proper enforcement of the provisions of this Act; and for such purposes there is hereby appropriated out of the Operators and Chauffeurs License Fund such money as may be necessary, not to exceed the sum of Seventy-five Thousand ($75,000.00) Dollars for the biennium ending August 31, 1955. Acts 1954, 53rd Leg., 1st C.S., p. 9, ch. 3.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner

VS.

STATE OF TEXAS,

Respondent

On Writ of Certiorari to the 57th Judicial District Court of Bexar County, Texas

BRIEF FOR RESPONDENT

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IN THE

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October Term, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner

VS.

STATE OF TEXAS,

Respondent

On Writ of Certiorari to the 57th Judicial District Court of Bexar County, Texas

BRIEF FOR RESPONDENT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The State of Texas, Respondent, in reply to the Brief filed in this cause on behalf of Petitioner, would show:

I.

QUESTIONS PRESENTED

There are three basic questions involved in this appeal. The first of these is the validity of the statutes in Texas providing for Suppression of the Communist Party and Related Organizations. These statutes are contained in Article 6889-3 and 6889-3A of the Revised Civil Statutes of Texas. The first of these is known as

the Communist Control Act and the second is referred to generally as the Suppression Act. The search warrant issued in this cause was issued in specific compliance with Section 9 of Article 6889-3A, the Suppression Act. The constitutionality of this law has been challenged.

The second of these questions is whether or not under the particular facts shown by the record in this case the United States Government has pre-empted the field of subversion as to this particular individual defendant and therefore precluded action on the part of the State.

The third of these questions is whether or not the search warrant issued violated a provision of the United States Constitution either under the First, Fourth, Fifth, or Fourteenth Amendment of the same. This was alleged by the Petitioner in the Court below and is brought forward in this appeal with many various grounds of lack of constitutionality being charged.

II.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, First Amendment, reads in part, as follows:

> "Congress shall make no law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The United States Constitution, Fourth Amendment, reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unrea-

sonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The United States Constitution, Fifth Amendment, reads in part, as follows:

"No person shall * * * be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;* * *"

The United States Constitution, Amendment Fourteen, states, in part, as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Communist Control Law of Texas is contained in Article 6889-3 of the Revised Civil Statutes of Texas. The Communist Suppression Act is contained in Article 6889-3A of the Revised Civil Statutes of Texas. A complete copy of these acts have been appended to the Brief of Petitioner filed herein beginning in the Appendix at page 39. The Suppression Act appears in the Appendix of Petitioner's Brief beginning at page 44. The most pertinent portion of such act is Section 9 of Article 6889-3A which reads as follows:

"A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of

searching for and seizing any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of this Act. Search warrants may be issued by any judge of a court of record in this State upon the written application of the District Attorney, Criminal District Attorney, or County Attorney, within their respective jurisdictions, accompanied by the affidavit of a credible person setting forth the name or description of the owner or person in charge of the premises to be searched, or stating that his name and description are unknown, the address or description of the premises, and showing that the described premises is a place where some specified phase or phases of this Act are violated or are being violated, or where are kept any books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or written instruments of any kind showing a violation of some phase or phases of this Act; provided that if the premises to be searched constitute a private residence, such application for a search warrant shall be accompanied by the affidavits of two credible citizens. Except as herein provided, the application, issuance, and execution of any such warrant and all proceedings relative thereto shall conform to the applicable provisions of Title 6 of the Code of Criminal Procedure; provided that any evidence obtained by virtue of a search warrant issued under the provisions of this Act shall not be admissible in evidence in the trial of any proceeding, administrative or judicial save and except those arising under this Act."

The Suppression Act which contains the above provision provides in brief the following:

1. That the Legislature has determined that there is a Communist conspiracy committed to the overthrow

of the government of the United States, of the several states and of Texas, by force and violence. (Section 1, Article 6889-3A.)

2. That it is unlawful for any person to:

a. Commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy, or alter, or assist in the overthrow, destruction, or alteration of, the constitutional form of the United States, or of the State of Texas, or of any political subdivision of either of them. (Section 5, Subsection 1, Article 6889-3A.)

b. Advocate, abet, advise, or teach by any means and person to commit, attempt to commit, or aid in the commission of any such act, under such circumstances to constitute a clear and present danger to the security of the United States or of the State of Texas, or of any political subdivision of either of them; or (Section 5, Subsection 3, Article 6889-3A.)

c. Conspire with one or more persons to do any of the above acts. (Section 5, Subsection 3, Article 6889-3A.)

d. Assist in the formation of, or participate in the management of, or *contribute* to the support of, or *become or remain* a member of, * * * the Communist Party of the United States or any component or related part or organization thereof, * * * knowing the nature of such organization. (Section 5, Subsection 4, Article 6889-3A.) (Emphasis supplied.)

The punishment for such an offense is set out in Section 6 as a fine not more than $20,000 or imprisonment not less than one year nor more than 20 years in the State penitentiary.

Pertinent provisions of Title 6 of Code of Criminal

Procedure of Texas, referred to in the Communist Suppression Law cited above, read as follows:

"Article 304. 'Search Warrant'

"A 'search warrant' is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense.

"Article 312. Application to Search Other Places

"A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:

"1. A description of the place suspected.

"2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

"3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

"4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth.

"Article 316. To Search Suspected Place

"A warrant to search a suspected place shall be sufficient if it contain the following requisites:

"1. That it run in the name of 'The State of Texas.'

"2. That it describe with accuracy the place suspected.

"3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed.

"4. That it name the person accused of having charge of the suspected place, if there be any such person, or, if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate.

"5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.

"Article 328. Magistrate Shall Investigate

"The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him."

III.

STATEMENT OF THE CASE

Two assistants of the Attorney General of Texas, Lonny Zwiener and V. Murray Jordan, were assigned to the investigation of Communist Party activity in the State of Texas. (R. 61-62, 58.) Jordan testified that in this investigation he talked to confidential informants and was told that the Petitioner was an official of the Communist Party in Texas. He was also told that Stanford also distributed certain described Communist Party literature at Communist meetings in Texas. He was shown various samples of the material used and was told by these informant that he (the in-

formant) had received this literature from Stanford at a Party meeting. (R. 61-62.) Zwiener testified that he also had such information, and added that he had been informed that this type of literature, pamphlets, etc., were located on the premises of John Stanford, and that on December 12, 1963, a few days before the issuance of the warrant, this type of literature was mailed from the home address of John Stanford. (R. 58.)

Applicant's Exhibit No. 11 is the joint affidavit of Jordan and Zwiener attached to the Application for the Search Warrant, and appears in the Record at page 70. The Application for the Search Warrant appears in the Record at page 71. The Search Warrant itself appears in the Record at page 72.

Such search warrant was served upon the wife of the Petitioner at the home of the Petitioner on December 27, 1963, and a return was made by the officers serving the warrant and introduced as Exhibit 17. (R. 74-107.)

IV.

SUMMARY OF THE ARGUMENT

The Texas Communist Control Act and Suppression Acts are valid enactments not pre-empted by the Communist and Subversive enactments of Congress. *Gitlow v. New York*, 1925, 268 US 652, 69 L. Ed. 1138, 45 S. Ct. 625; *Uphaus v Wyman*, 1958, 360 U. S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090; *Head v New Mexico Board of Examiners*, 1963, 374 U. S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983. Pre-emption is a legal and not a factual matter.

The search warrant was issued on probable cause under numerous authority. That the papers in this

application do not fall into the vice of *Aguilar v. Texas*, 1964, 378 U. S. 108, 84 S. Ct. 1509, since the affidavit shows verification of the information given from additional extrinsic facts.

No case has ever held that a recitation in the application for a search warrant to the specific statute violated was insufficient to set out the crime being investigated through the search.

The description of the items seized was sufficient under the law.

What items become implements of crime primarly depend upon legislative enactment and the Legislature has the power to fix reasonable limitations upon what can be seized.

V.

ARGUMENT

A. The Texas Communist Control and Suppression Acts are Valid

This is the first time that there has ever been a challenge to the constitutionality of the statutes of Texas suppressing the organization and operations of the Communist Party in Texas. The Criminal District Attorney of Bexar County, Texas, has held up the presentment of this matter to the Grand Jury because of the challenge made in this case. If the Communist Control and Suppression Acts are valid enactments and their provisions are constitutional, this Petitioner should be prosecuted under them. It is the opinion of the officers representing the State of Texas that such acts are valid and constitutional.

It has been held by this Court that the State may lawfully and constitutionally enact a statute which

provides that it shall be a felony to advocate the overthrow of the lawful organized government by force and violence. *Gitlow v. People of New York*, 1925, 268 U. S. 652, 45 S. Ct. 625, 69 L. Ed. 1138. In that case the statute defined the offense called "criminal anarchy" as the doctrine that organized government should be overthrown by force or violence or by any unlawful means and declared that the advocacy of such a doctrine was a felony. The Court pointed out that:

> "Every presumption is to be indulged in favor of the validity of the statute. * * * And the case is to be considered 'in the light of the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare: * * *.' That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear."

The Court in that case, cited many other decisions along the same vein, both from this Court and the appellate courts of the various States.

For instance, the validity of a state statute allowing the revocation of a license to a school which teaches the overthrow of the government by force, violence or unlawful means was upheld in *People v. American Socialist Society*, 1922, 195 N.Y. Supp. 801, 202 App. Div. 640.

In *People v. Lloyd*, Supreme Court of Illinois, 1922, 136 N.E. 505, 304 Ill. 23, where the prosecution was under a statute making it a criminal offense to advocate the overthrow of the organized government by force and violence the Court said:

> "Plaintiffs in error contend that every section of said act is invalid for the reason that the General

Assembly of Illinois does not have the power and authority to make unlawful and punishable the advocacy of the reformation or overthrow of all or of the separable part of the constitutional representative form of government of the United States of America, or the constitutional representative form of government of all or any one of the other 47 several states of the United States, and that the Congress of the United States is the only legislative body in the United States, if any, which has the power and authority to make such advocacy unlawful and punishable. This contention is based in part at least on the argument that the power and authority to 'guarantee to every state in this Union a republican form of government' and to 'protect each of them against invasion' are lodged by section 4 of article 4 of the Constitution of the United States exclusively in the United States. This contention is not sound. The citizens of this state are citizens of the United States, and the citizens of the United States residing within the borders of this state are citizens of this state. Each citizen owes a duty to these two separate sovereignties. The state is a part of the nation, and owes a duty to the nation to support the efforts of the national government to secure the safety and protect the rights of its citizens, and to preserve, maintain, and enforce the sovereign rights of the nation against public menace, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively defending itself against such public enemies. * * * There is nothing in the federal Constitution in any way granting to the federal government the exclusive right to punish disloyalty."

The conviction was affirmed.

There are other cases in which the state subversion statutes have been upheld. Some of these are:

Commonwealth v. Widovich, 1929, Supreme Court of Pennsylvania, 295 Pa. 311, 145 A. 295, Cert. Den. 280 U. S. 518, 50 S. Ct. 66, 74 L. Ed. 588. This case upheld the Pennsylvania Sedition Statute.

Whitley v. People of California, 1926, 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095. This case upheld the validity of the California "criminal syndicalism" statute.

State v. Tachin et al., Supreme Court of New Jersey, 1919, 106 A. 145, affirmed by Court of Appeals, 1919, 108 A. 318. This case upheld a State statute prohibiting sedition against the Federal government alone.

Faxon v. School Committee of Boston, Supreme Judicial Court of Massachusetts, 1954, 120 N.E. 2d 772. This case upheld a state statute requiring a teacher to testify whether or not she was a member of the Communist Party.

Wyman v. Sweezy, Supreme Court of New Hampshire, 1956, 121 A. 2d 783. This case upheld the right of the Attorney General to investigate subversive activities in his state under a Legislative Resolution. The holding in this case was reversed by the Supreme Court of the United States in *Sweezy v. New Hampshire*, 354 U. S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311, in 1957, on the theory of infringement of "academic freedom" however the law of this case was again modified by the *Uphaus* case discussed hereafter under this point.

The law was as clear as it could be on this point until the decision of the Supreme Court of the United States in *Commonwealth of Pennsylvania v. Nelson*, 1956, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640. This was an appeal by Steve Nelson, an organizer for the Communist Party from a conviction under the Pennsylvania sedition act. The facts of this case become complicated by

the fact that the alleged sedition was against the "United States" and not against the State of Pennsylvania. Nelson had raised in the Superior Court of Pennsylvania the issue that the court was without jurisdiction because the Federal Government had preempted or occupied the field. (92 A. 2d 434.) The state Superior Court had said:

> "These Acts (McCarran and Smith) are very broad and include the protection of the national as well as the state government from the ravages of Communism. However, that alone does not nullify the State legislation. As we have just stated, that nullification comes about only when the Federal Government's jurisdiction is exclusive or when it is supreme, and in the latter case the Federal Government must expressly or by necessary implication indicate its intention of superseding or precluding action of the states. * * *"

The Superior Court then concludes that there is nothing in either act to lead to that conclusion and points out that the McCarran Act has a specific provision that expressly states that it is not modifying existing law.

The Superior Court then holds that sedition is a field over which the States and Federal Government have concurrent jurisdiction. This Court also holds that the State need not have to depend upon the vigilence and action of Federal authority and risk its own existence in the bargain. The intelligence of this view is amply borne out by recent events in Dallas, Texas, occurring since the original trial of this matter. It is pointed out in this case also that there is absolutely nothing in the Constitution which relegates this field exclusively to the United States.

When the case finally reached the Supreme Court of

the United States, the opinion, handed down by the Chief Justice for the majority, asserted for the first time the doctrine of Federal pre-emption in the field of sedition and had statements in his opinion that leave the clear impression that no State sedition statute is thereafter valid. Such statements include:

> "It should be said at the outset that the decision in this case does not affect the right of the States to enforce their sedition laws at times when the Federal Government has not occupied the field and is not protecting the entire country from seditious conduct. * * *"

How state officials charged with the duty of enforceing the Legislative enactments of the state are to determine the times that the Federal Government is supposedly protecting the entire country and the times that the Federal Government is not, is not disclosed.

Nelson also states:

> "* * * Neither does it limit the right of the State to protect itself at any time against sabotage or attempted violence of all kinds. Nor does it prevent the State from prosecuting where the same act constitutes both a federal offense and a state offense under the police power. * * *"

After setting out the Smith Act, the Court concludes:

> "We examine these Acts only to determine the congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress had intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law. * * *"

> "*Second*, the federal statutes touch a field in which the federal interest is so dominant that the federal system (must) be assumed to preclude enforcement of state laws on the same subject. * * *"
>
> "*Third*, enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program. * * *"

Under this point the Court relies upon a Presidential request that all sheriffs and other officers turn over to the F.B.I. all information on subversion and a speech by J. Edgar Hoover. On this authority the doctrine of pre-emption is imposed.

If this were the end of the matter, there would have been no search warrant run on the home of this Petitioner and no possibility of his indictment. But this is not the end of the story, for in *Uphaus v. Wyman*, 1958, 360 U. S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090, the Court speaking through Justice Clark discussed again the problem of sedition and the states. Here the judgment appealed from was for contempt of the Legislature for refusal to answer questions before an investigating committee. The contention of the Defendant was that the Smith Act and the other federal statutes occupied the field of subversion to the exclusion of the state authority. He relied specifically on the *Nelson Case*, supra, and it certainly holds what he says it holds. However, at this point the Court attempts to clarify what it meant in this opinion by saying:

> "Appellant vigorously contends that the New Hampshire Subversive Activities Act of 1951 and the resolution creating the committee have been superseded by the Smith Act, as amended. In support of this position appellant cites Com. of Pennsylvania v. Nelson, supra. The argument is that Nelson which involved a prosecution under a state

sedition law, held that 'Congress had intended to occupy the field of sedition.' * * * This rule of decision, it is contended, should embrace legislative investigations made pursuant to an effort by the Legislature to inform itself of the presence of subversives within the State and *possibly to enact laws in the subversive field.* The appellant's argument sweeps too broad. In Nelson itself we said that the 'precise holding of the court' * * * is that the Smith Act * * * which prohibited the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the *'same conduct.'* (Italics supplied) * * * The basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. *The opinion made clear that a State could proceed with prosecutions for sedition against the State itself;* that it can legitimately investigate in this area follows *a fortiori.* In *Sweezy v. State of New Hampshire,* supra, where the same contention was made as to the identical state Act, it was denied *sub silentio.* Nor did our opinion in Nelson hold that the Smith Act had proscribed state activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.' In footnote 8 of the opinion it is pointed out that the State had full power to deal with internal civil disturbances. Thus *registration statutes, quo warranto* proceedings as to subversive corporations, the subversive instigation of riots and a host of other subject directly affecting state security furnish grist for the State's legislative mill * * *" (Emphasis supplied.)

What the problem then boils down to is this. If the Texas statute is invalid because it is pre-empted by action of the Smith or McCarran Acts, then the search

in this case is illegal. This is because there was no valid statute upon which it could be based. If this is the case the action of the trial court should be reversed.

Texas is not the only state that has confronted the problem raised by the conflict in language between the *Nelson* and *Uphaus* cases. In *Braden v. Kentucky*, 1956, 291 S. W. 2d 843, the Court of Appeals of that state followed the decision in the *Nelson* case where the defendant, Carl Braden, was charged with an attempt to violently overthrow both Kentucky and the United States. The Court qualified the opinion by stating:

> "* * * To be certain of making ourselves clear, we now state this opinion does not foreclose the possibility of a prosecution by the Commonwealth of the crime of sedition directed exclusively against the Commonwealth of Kentucky."

In *Florida v. Diez*, 1957, 97 So. 2d 105, the Supreme Court of Florida held that the passage by the U. S. Congress of the three acts involved (Smith Act of 1940, Internal Security Act of 1950, and the U. S. Communist Control Act) did not pre-empt the entire field as to subversive activities. This court pointed out that in *Nelson*, the defendant was charged with attempting to overthrow the United States in violation of a State statute, and the holding did not limit the right of the State to protect itself.

This court has had an occasion to recently discuss the rules with relation to the doctrine of pre-emption in *Head v. New Mexico Board of Examiners*, Decided June, 1963, 374 U. S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983. In the majority opinion by Justice Stewart, he sets out the general rules in this type of case. He says that a charge of pre-emption by the Federal Government of a particular field, the rules are:

1. Such claim cannot be judged by broad statements about the "comprehensive" nature of the federal regulation.

2. The question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State must be answered by a judgment on the facts of the particular case.

3. The basic question is whether Congress intended to make its jurisdiction exclusive.

4. In areas of the law not inherently requiring national uniformity, decisions require that state statutes, otherwise valid be upheld, unless there is found:

a. Such actual conflict between the two schemes of regulation that both cannot stand in the same area; or

b. Evidence of a congressional design to pre-empt the field.

In Justice Brennan's concurring opinion, he states the rules in the following sequence:

1. Whether the subject matter is clearly one which "by its very nature" admits "only of national supervision."

2. Whether there is evidence of congressional intent exclusively to occupy the field.

3. Whether as a practical matter—both regulations can be enforced without impairing the federal superintendence of the field. This test also requires a showing of conflict in purpose or in operation between the state and federal regulations involved.

A recent federal district court case upholding the Louisiana Anti-Subversion Law, a law very similar

to the Texas statutes, is *Dombrowski, et al. v. Pfister*, 227 F. Supp. 556.

We do not think that the Texas statutes are void or invalid upon their face for any constitutional reason. Since the statutes include subversion aimed at the State of Texas, we do not think that the Federal government has the exclusive jurisdiction in this field. Under the explanation of the *Nelson* case in the *Uphaus* case, we do not think that the statute has been superseded. After all, under the *Uphaus* case, there would have been no reason for a Legislative inquiry if there was not the power to legislate. Therefore, we think that on this ground the Petition for the Writ of Certiorari should be denied.

B.

Pre-emption as a Factual Matter

The Petitioner proved by its witness, John Goode (R. 22) that the Petitioner was under investigation by the Security Division of the State of Texas and the Governor of Texas in 1951. (R. 23). About all this established was that this Petitioner was suspected of Communist activity for a considerable period of time. The Petitioner also proved that the United States Marshal for the Western District of Texas, Jesse Dobbs, had served the Petitioner with a Report and Order that he register as a Communist on December 26, 1963. (R. 16, 17). The search warrant in this case was served upon the house of the Petitioner on December 27, 1963.

Hugh Nations, Reporter for the San Antonio Express, a daily newspaper, testified that the news report of the order by the Subversive Activities Control Board did not get into the newspaper and onto the

street until 12:45 P. M. on December 27, 1963. (R. 66). The parties that conducted the search arrived at the Stanford residence at 2:30 P. M. (R. 32). The application for the warrant recited that it was made as a result of mailing of material from the Petitioner's house on December 12, 1963. None of the material mailed was introduced.

It is the position of the State of Texas that the doctrine of pre-emption is not a subject of factual proof as was here attempted by the Petitioner, but is, in fact, a legal proposition involving the comparison of the laws and a construction involving the intention of Congress and the State Legislature passing the act. In this matter the *Nelson* case, supra, is again relied upon by the Petitioner, and the construction of the case in the *Uphaus* case.

The position of the State is that these holdings show clearly that the State and Federal Governments have concurrent jurisdiction in this matter. At least this is true in that the Federal government has the right to protect the United States from subversion and the State of Texas has a right to defend itself from overthrow of the State. The fact that both authorities are interested in the same individual would appear to show nothing in relation to the right of each government to act. We feel that the intent of the holdings of the *Nelson* and *Uphaus* cases is not that whichever authority begins first, in point of time, ousts the other from jurisdiction and power to act. A more logical view would be that each authority has the right to protect itself.

As to this point, the State feels that the Petition for Certiorari should be denied.

C.

CONSTITUTIONAL ATTACK ON THE SEARCH WARRANT ITSELF

A multi-barreled attack is levied at the search warrant in this case. It is claimed to violate the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. In addition, other claims are made concerning conformity to the statutes involved.

In 24 R. C. L. 715, it is said:

> "While search warrants seem to have been first confined to proceedings for the discovery and seizure of stolen goods, their use has been extended by statutory enactments as an aid to the discovery and punishment of any character of public offense when it may be available. The grounds on which such a warrant may be issued may be divided into three classes: (1) when the property sought has been stolen or embezzled; (2) when it has been used as a means of committing a felony; and (3) when it is in the possession of any person with the intent to use it as the means of committing a public offense. But as a rule the use of it may not be extended by construction to any case not clearly covered by statute. However, the term 'unreasonable,' in the constitutions of the states, has allusion to what had been practiced before our revolution, and especially to general search warrants, in which the person, place or thing was not described. It is believed that no search warrant is unreasonable, in the legal sense, when it is for a thing obnoxious to the law, and of a person and place particularly described, and is issued on oath of probable cause."

Article 304 of Title 6 of the Code of Criminal Procedure of Texas authorizes search warrants for the purpose of searching the premise for stolen property,

or "implements kept for the purpose of being used in the commission of any designated offenses." This type of provision is not unusual. The Supreme Court of Oregon has pointed out in *State of Oregon v. Chinn*, 1962, 373 Pac. 2d 392, that virtually every American jurisdiction has a statute of similar import which restricts the type of evidence which may be seized under warrant. In addition to this, the Communist Suppression Act itself contains a specific provision as to what may be seized under Section 9 of Article 6889-3A, Texas Revised Civil Statutes.

The search warrant in this case calls for:

> "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas * * * unlawfully possessed in violation of Article 6889-3 and Article 6889-3A, Revised Civil Statutes of the State of Texas. * * *"

1. PROBABLE CAUSE

The petitioner complains that the search warrant was not issued on probable cause. The facts show that the two Assistants Attorney General involved, Zwiener and Jordan, had information from credible and reliable persons that:

1. The Petitioner was an official of the Communist Party of Texas.

2. That Petitioner had distributed literature which was identified as Communist Party literature at Communist meetings in Texas.

3. That Jordan had been shown samples of this literature and knew of what it consisted.

4. That on December 12, 1963, such literature had been mailed from the home address of Petitioner.

Petitioner at the Magistrate's hearing to determine the validity of the search warrant carefully avoided inquiring into the question as to whether all the foregoing facts were brought to the attention of the Magistrate at the time of the application for the search warrant (R. 16-67).

It is clear under the state law that membership in the Communist Party, attendance of such meetings, being an official of such party, failure to register as a member of such Party, and contributing to further the cause of this party would also constitute offenses under the Communist Control and the Suppression Acts, discussed heretofore.

The attack made upon the search warrant under this section seems to be that the Petitioner feels that the warrant was issued on hearsay information and conclusion from what the Affiants had been told.

The Supreme Court of the United States has recently held that probable cause could be supported by hearsay, and that a search warrant could constitutionally issue on this type of information. *Wong Sun v. United States*, 1963, 371 U. S. 471, 83 S. Ct. 407, 413, 9 L. Ed. 2d 441; *Jones v. United States*, 1960, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697.

It seems to be clear from numerous authorities that no specific test of what constitutes "probable cause" has ever been laid down. "Probable cause" fixes and is a legal standard. *U. S. v. Wroblewski*, 1939, 7th Cir., 105 F. 2d 444. It means that the "grounds" for the issuance of the warrant must be stated and that there is no express prescription with respect to it in the

Constitution. *Lowrey v. U. S.*, 1947, 8th Cir. Ark., 161 F. 2d 30, Cert. Den. 331 U. S. 849, 67 S. Ct. 1737, 91 L. Ed. 1858, reh. den. 332 U. S. 787, 68 S. Ct. 36, 92 L. Ed. 369.

Probable cause, of course, deals with probabilities. It need not on its face be sufficient proof to convict. *U. S. v. Nicholson*, 6th Cir., Tenn., 1962, 303 F. 2d 330, Cert. Den. 371 U. S. 823, 83 S. Ct. 43, 9 L. Ed. 2d 63; *Dumbra v. U. S.*, 1925, 268 U. S. 435, 45 S. Ct. 546, 69 L. Ed. 1032.

In *West Virginia v. Kees*, 1922, 114 S. E. 617, 27 A.L.R. 681, the Supreme Court of Appeals of that State, discussing the common law as to probable cause, said this:

> "* * * Under the common law in effect in this country at the time of the adoption, not only of the Federal Constitution, but of the various State Constitutions, search and seizure warrants were issued; but there were only allowed to be issued upon complaint made upon the oath or affirmation of the party seeking the same. The English Constitution had guaranteed to the citizen this immunity to his person and premises from search and seizure from a time whereof the memory of man runneth not to the contrary, and we think it may be said that when the constitutional provision relied upon came into the organic law of the American states, the purpose was to preserve to the citizen the right then enjoyed by him under the common law of England.
>
> "It cannot be doubted but that under the common law, a complaint made upon the information of the party desiring the issuance of the warrant, in the form of the complaint involved in this case, would have constituted probable cause for the issuance thereof. In fact, an examination of the au-

thorities shows that the usual search warrant was issued at the time was that affiant had probable cause to suspect, and did suspect, that an offense was being committed upon particular premises under the control of particular parties. * * *"

The most recent case in the field at the present time was decided by the Supreme Court after this petition was filed. It is *Aguilar v. Texas*, 1964, 378 U. S. 108, 84 S. Ct., 1509.

The *Aguilar* case involved a search warrant issued by officers in Houston for the purpose of searching for narcotics. The differences between that case and this one appear to be simple. Here the attorneys making the affidavit had both information gathered during investigation concerning Communist materials located at the premises described and information as to mailings from these premises of the same type of materials made shortly prior to the application. (R. 71, 72.) Under the State law at the time both the *Aguilar* warrant and the *Stanford* warrant would be valid. As a matter of fact, the *Stanford* warrant goes much further than the *Aguilar* warrant. The Court in *Aguilar* states:

"* * * Thus, when a search is based upon a magistrate's rather than a police officer's determination of probable cause, the reviewing courts will accept evidence of less 'judicially competent or persuasive character than would have justified an officer in acting on his own without a warrant."

The Court in *Aguilar* specifically stated it would allow a search warrant to be issued upon hearsay, but required that supportive facts be stated. Here we have supportive facts—the mailing on a specific date—certainly confirming the information given. Thus, we do not think the State falls into the same situation as it did in *Aguilar*.

We believe that these facts show probable cause and that the magistrate was justified in issuing the warrant.

2. FAILURE TO SPECIFY THE CRIME CHARGED

While we have no desire to argue the points made by the Petitioner that in criminal process, complaints and indictments require that the crime for which they are brought be specified, we can find absolutely no authority holding that this is a requirement of a search warrant. None of the cases cited by Petitioner hold this and we are not aware of any others so holding at this time.

It is obvious that warrants of commitment and indictments stand on an entirely different ground than search warrants, since their only purpose is to state the crime committed and the search warrant is for a different purpose altogether. The Texas statutes require that the offense be designated (See Art. 304, CCP; Art. 312, CCP; Art. 316, CCP, supra), and here both the affidavit and warrant set out that the implements to be searched for were used in violating Articles 6889-3 and 6889-3A, Revised Civil Statutes of Texas. No case holds that any further specification of the crime is a constitutional requirement, and it is interesting to note that the affidavit in *Jones v. United States*, 302 U. S. 257, cited, apparently with approval by the Court in the *Aguilar* opinion, describes the occupants of the premises searched as engaged in "illicit narcotic traffic" and the "sale of narcotic drugs" and the items to be seized as "illicit narcotic drugs," generalized descriptions covering a number of offenses under the laws of the United States.

3. ITEMS SEARCHED FOR AND DESCRIPTION IN WARRANT

The items seized in this raid included many books and papers. Most of the books were in multiple copies. Included were such things as Reports of the Fair Play for Cuba Committee. Other books included On the Party-Lui Sho-Chi, Peking, 1950; Soviet booklets on the Trial of American U-2 Spy Pilot from Moscow; Joseph Stalin's biography; and books by Earl Browder, Eugene Dennis, Fidel Castro, Che Guevara, Karl Marx, Frederick Engles, V. I. Lenin, William Z. Foster, Hu Sheng, N. S. Khrushchev and Gus Hall. Also included were several files of addresses and names; and a metal letter file cabinet containing a file of the Gus Hall-Benjamin Davis Defense Committee and other files.

The last item listed above contained a large amount of letter files, samples of which have been shown as exhibit 16. Unfortunately, the last few files in this cabinet contained some personal files of the Petitioner and were tendered back to the Petitioner in the course of the hearing. (R. 42, 45-47.) The Petitioner refused any of his personal papers, apparently under the impression that acceptance would void his claim of invalidity of the search.

The position of the State of Texas is that such items would, in view of the facts shown, constitute implements kept for the purpose of committing a designated offense, under the statute. Various items have been held to constitute implements under our law. In *State of Oregon v. Chinn*, supra, the Supreme Court of Oregon held that a bottle used to give beer to a minor could be an implement in the commission of statutory rape. This court also held that a bed-sheet and a cam-

era with which pictures of the girl were taken could constitute implements.

Judge Learned Hand discussed a similar problem in *U. S. vs. Kirschenblatt*, 1926, 2nd Cir., 16 F. 2d 202, when considering a search in which papers showing liquor transactions were seized and stated:

> "* * * The real difficulty in this case at bar appears to us to be in the application of the last doctrine, because it is apparent that a paper may be itself the very thing against which the law is directed. * * * As was said in Gouled v. U. S., papers as such have no sanctity, and may be seized, like any other property, if they offend. Courts have at times extended the doctrine to papers, not actually part of the criminal act, but necessary to the conduct of the venture as a whole. * * *
>
> "The forged note, the fraudulent prospectus, the policy slip, the written contract, if that be forbidden, the seditious broadside—perhaps all of these may be contraband and subject to seizure when found on the premises. * * *"

The Court held that illegally overprinted stamps were contraband in *U. S. v. Rabinowitz*, 1950, 339 U. S. 56, 70 S. Ct. 430, 94 L. Ed. 653.

In *Leahy v. U. S.*, 1959, 9th Cir., 272 F. 2d 487, under a charge of evasion of the occupation tax on wagering the court upheld the seizure of an "adding machine, a telephone, record books, receipts, pencils, pens, money, keys to safety deposit boxes, rifles and pistols" as instrumentalities of crime and stated specifically:

> "* * * records of an illicit business are instrumentalities of crime."

See also: *Johnson v. United States*, 1961, USCA-DC, 293 F. 2d 539.

Chief Justice Taft remarked in writing for the majority in *Carroll et al. v. United States*, 1925, 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543, that

> "The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens. * * *"

In *Marron v. United States*, 1927, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231, the Court held that the seizure of bills sent to a place of business and a ledger showing the operation of a place of business selling intoxicating liquor did not violate the Fourth Amendment. Here the items had been taken by prohibition agents during a search for intoxicating liquor under a warrant for liquor. This result was reached on the theory that such search was not unreasonable because such items were things used to carry on the criminal enterprise. The court noted that they were as important as the bottles and glasses to the carrying on of the business.

Certainly, in view of the knowledge that the officers in this case had, the pamphlets and books seized here were important to carrying on the seditious activity involved. See also *Adams v. New York*, 192 U. S. 585, 24 S. Ct. 372, 48 L. Ed. 575.

Several cases other than those above have allowed papers which constituted instrumentalities of the crime to be admitted after seizure by warrant. *Mac Knight v. United States*, 1st Cir., 1920, 263 F. 832, 838, Cert. Den., 253 U. S. 493, 40 S. Ct. 586, 64 L. Ed. 1029; *Foley v. United States*, 1933, Fifth Cir., 64 F. 2d 1, Cert. den., 289 U. S. 762, 53 S. Ct. 796, 77 L. Ed. 1505; *Johnson v. U. S.*, 1961, D. C., 293 F. 2d 539; *Brunatt v. U. S.*,

1944, 4th Cir., 145 F. 2d 270, Cert. den., 323 U. S. 788, 65 S. Ct. 314, 89 L. Ed. 628; *Sanders v. U. S.*, 1956, 10th Cir., 238 F. 2d 145.

The Petitioner complains of the description of the property to be searched for, and contends that such description is insufficient to meet the constitutional test. The description is precisely in the words of the statute as to what may be searched for. As was pointed out in *Commonwealth of Pennsylvania vs. LaCamera*, 1963, 186 A. 2d 63, stolen property was required to be particularly described because the owner knew what his property consisted of. But the same is not true when searching for such items as gaming implements, implements for the sale or manufacture of liquor and like items. To hold otherwise would require the officer to be specific in guesswork as to what he would find.

As to State practice, the Constitution of Texas actually recognizes this problem when it states in Article 1, Section 9 as follows:

> "The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them *as near as may be*, nor without probable cause, supported by oath or affirmation." (Emphasis supplied.)

It has been held that a general description of the property to be searched for is sufficient under the laws of Texas. *Parrack v. State of Texas*, Court of Criminal Appeals, 1950, 288 S. W. 2d 859:

CONCLUSION

The State of Texas has attempted to follow and has clearly followed the Legislative enactments providing for this Search Warrant. The Magistrate has passed upon the probable cause for this warrants issuance twice—before issuance and in the statutory hearing after issuance.

If the law under which the State acted is valid—and we believe it is—whether the items seized prove the guilt of this Petitioner and are admissible is a matter for a proper trial after indictment.

We think the action of the trial court was proper—the law is valid—and the magistrates action should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I have entered my appearance on behalf of the Respondent, State of Texas, in the above entitled and numbered cause, and I certify that copies of the foregoing Brief for Respondent were served upon Maury Maverick, Jr., Maverick Building, San Antonio 5, Texas, John J. McAvoy, 14 Wall Street, New York 5, New York, and Melvin L. Wulf, 156 Fifth Avenue, New York 10, New York, Attorneys for Petitioner, by depositing same in the United States mail, properly addressed, postage paid, certified mail, on this the _____ day of _____, 1964.

_____

JAMES E. BARLOW
Of Counsel

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 12 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner,

—vs.—

STATE OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

REPLY BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner,

—vs.—

STATE OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

REPLY BRIEF FOR PETITIONER

Respondent's brief (pp. 9-19) attempts to defend the general constitutional validity of its Communist Control Law, Article 6889-3, and Suppression of Communist Party Law, Article 6889-3A. Respondent's concern for the validity of the entirety of these laws is justified. If the Control and Suppression Laws, apart from the invalidity of Section 9 of the latter, violate the First, Fifth, and Fourteenth Amendments on their face, then the seizure of petitioner's property and respondent's intended prosecution of petitioner (Resp. Brief, p. 9) are wholly without foundation.

Petitioner contended in the court below that, in addition to the defects in Section 9, the Control and Suppression Laws as a whole violate on their face the First, Fifth, and Fourteenth Amendments of the Constitution (R. 4-5, 13-14).

Although the Control Law and the Suppression Law attempt to regulate a multitude of activities, petitioner believes they must stand or fall on the basis of their definitions of the persons, organizations, and actions they purport to cover.[1]

I. The Control Law

Section 4 of the Control Law requires the registration with the Texas Department of Public Safety of any person,

> ". . . who is a Communist or is knowingly a member of a Communist Front Organization. . . ."

as well as every officer of the Communist Party and of Communist Front organizations. Failure to register or to provide the information required by the statute is a felony punishable by a fine of $1,000 to $10,000 and imprisonment for not less than 2 nor more than 10 years under Section 4(D).

Sections 1, 2, and 3 of the Control Law supply the statutory definitions. They are discussed in turn below.

"Communist"

Section 1 contains four sub-parts, each offering an alternative definition of a "Communist". Each of them is constitutionally invalid.

> *Definition A*: A Communist is a person who "is a member of the Communist Party; notwithstanding the fact that he may not pay dues to, or hold a card in, said Party."

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[1] Although the Control Law, Article 6889-3, contains a severability provision in its Section 9, as a matter of logic and statutory construction one cannot separate from the definitional sections discussed below any operative part of the two acts, save perhaps Section 5 of the Control Law, dealing with sabotage.

Compulsory registration for membership in the Communist Party plainly inhibits the freedom of association normally protected by the First Amendment.[2] Though this Court in several of its decisions has recognized certain narrow exceptions to the reach of First Amendment protections when required by the threat of violent overthrow [e.g., *Dennis* v. *United States*, 341 U. S. 494 (1951)], it has seen fit to limit the exceptions to active and knowing rather than merely nominal membership where the Communist Party is concerned, a distinction the Texas statute fails to recognize. *Noto* v. *United States*, 367 U. S. 290 (1961); *Scales* v. *United States*, 367 U. S. 203 (1961); *Yates* v. *United States*, 354 U. S. 298, 331 (1957). Moreover, the definition of "Communist" in subsection A, fails to provide "terms susceptible of objective measurement." *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 286 (1961). The likelihood that the definition of a "member" may be applied to a delicately shaded range of affiliation, from active to passive to inactive, and to past membership as well, is grounds for declaring it too vague for rational application. *Baggett* v. *Bullitt*, 377 U. S. 360 (1964).

> *Definition B*: A Communist is a person who "knowingly contributes funds or any character of property to the Communist Party."

Although the donation of money or property to the Party may be one indication of active and knowing membership, due process, particularly in a First Amendment context, forbids its being elevated to conclusive evidence of membership. The relationship between contribution of funds or property and membership, is as indeterminate as the relationship between membership and total subscription to policy.

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[2] See Petitioner's Brief, p. 18, note 3.

> "[M]en ir adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." *Aptheker* v. *United States*, 378 U. S. 500, 510 (1964).

> *Definition C*: A Communist is a person who "Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them, by force or violence."

The language "reasonably calculated to further the overthrow" is so broad and susceptible to selective application that it fails to meet the constitutional distinctions, required by *Yates*, *supra*, between advocacy of abstract doctrine and advocacy that incites to action. 354 U. S. 320, 322-327 (1957). Furthermore, the language fits perfectly Mr. Justice Holmes' definition of the vague statute. It requires one "to divine prophetically what the reaction of only partially determinate facts would be . . .," thereby seeking "to exact gifts that mankind does not possess." *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 223-224 (1914).

> *Definition D*: A Communist is a person who "Commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States, the Government of the State of Texas, or the government of any political subdivision of either of them, by unlawful or unconstitutional means, and the substitution of a Communist government or a government intended to be substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites."

This section is subject to the same criticism for vagueness as "C" above but is aggravated by substituting "unlawful or unconstitutional means" for "by force and violence." Thus, as in *Baggett* v. *Bullitt*, 377 U. S. 360 (1964), the language requires "foreswearing of an undefined variety of 'guiltless knowing behavior' . . ."

"Communist Party"

> "Sec. 2 The 'Communist Party' is any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which in any manner advocates, or acts to further, the world Communist movement."

Here, too, vagueness rules, for the definition is no more "susceptible of objective measurement" (*Cramp*, *supra*, at 286) than are the preceding sections. What "satellites," we may ask. Those under Soviet domination at the time the statute was adopted thirteen years ago, or today? Albania? Yugoslavia?

The Subversive Activities Control Act's scheme for defining a Communist-action organization contains the minimum requirements which must be met to save this kind of definition from impermissible vagueness. *Communist Party* v. *Subversive Activities Control Board*, 367 U. S. 1 (1961). That Congressional Act, in addition to defining a Communist-action organization in general language basically not dissimilar to the statute involved here,[3] refines its definition by somewhat more specific determinants.[4] The Texas statute contains no such refinement.

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[3] Sec. 3 (3) (a), 50 U. S. C. Sec. 782 (3) (a).

[4] Sec. 13 (e), 50 U. S. C. Sec. 792 (e).

Communist Front Organization

> "Sec. 3 A 'Communist Front Organization' is any organization the members of which are not all Communists, but which is substantially directed, dominated or controlled by Communists or by the Communist Party, or which in any manner advocates, or acts to further, the world Communist movement."

Here also Texas has drawn upon the Subversive Activities Control Act, but it has neglected to follow the logical path of including the refinements contained in the federal statute. The Subversive Activities Control Act contains more than the bare definition that Texas has adopted. In Section 13(f) of the federal statute [50 U. S. C. Sec. 792(f)], Congress undertook to provide more specific guides to the definition of a Communist-front. Certainly, nothing less will satisfy the constitutional command of specificity.[5]

The vagueness that pervades every section of the Control Act is its principal constitutional defect. *Baggett* v. *Bullitt, supra.* It is made the more noxious because its purpose and effect is to invade the freedoms guaranteed by the First Amendment. This Court has pointed out time and again that the Constitution does not tolerate vague statutory language which trenches on First Amendment freedoms. Very recently, in *N.A.A.C.P.* v. *Button*, 371 U. S. 415, 432-33 (1963), the Court said:

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[5] We respectfully call to the Court's attention the amicus curiae brief of the American Civil Liberties Union in *Veterans of the Abraham Lincoln Brigade and American Committee for Protection of the Foreign Born* v. *Subversive Activities Control Board*, Nos. 65 and 44, this Term, which challenges the constitutionality of the "Front" provisions of the Subversive Activities Control Act, particularly pp. 37-42, 43-50.

> "[I]n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. . . . The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. . . . These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions."[6]

II. The Suppression Law

The Suppression Law is closely modeled after Section 3 of the Communist Control Act of 1954, 50 U. S. C. Sec. 842.[7] The broad sweep of Section 2 of the Suppression Law purports to make illegal the Communist Party and

> "all other organizations . . . which . . . advocate, abet, advise, or teach, or a purpose of which is to . . . advocate, abet, advise, or teach any activities intended to . . . alter . . . the constitutional form of government [of the United States or Texas] by force or violence".

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[6] It hardly has to be pointed out that the Texas Control Law is unconstitutional for the additional reason that it contains no hearing procedure whatsoever. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123 (1951).

[7] This Court has said of Section 3 of the Communist Control Act:

> "Apart from unrevealing random remarks during the course of debate in the two Houses, there is no legislative history which in any way serves to give content to its vague terminology." *Communist Party* v. *Catherwood*, 367 U. S. 389, 392-93 (1961).

This plainly offends the Court's disapproval of virtually identical language in the 1955 loyalty oath statute struck down in *Baggett* v. *Bullitt*, *supra*.

In addition, Section 4 of the Suppression Law attempts to establish a rule of evidence by which bare "affiliation" of any group, with any "parent or superior organization" which advocates, abets, advises, or teaches violent destruction or alteration of the existing form of government, is "prima facie evidence" that the affiliated group is also an organization which engages in or teaches or advises violent overthrow of the government. Presumably, the purpose of the affiliation, no matter how innocent or unrelated to the advocacy of proscribed doctrine, is irrelevant under the statute. Section 4 thus violates the due process precepts of *Baggett* v. *Bullitt*, *supra*, *Wieman* v. *Updegraff*, 344 U. S. 183 (1952) and *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*, by setting indiscriminate traps for innocent behavior. As Mr. Justice Clark, speaking for the Court in *Wieman*, noted:

> "At the time of affiliation, a group itself may be innocent, only later coming under the influence of those who would turn it toward illegitimate ends. Conversely, an organization formerly subversive . . . may have subsequently freed itself from the influences which originally led to its listing. 344 U. S. at 190."

The vice of Section 4 of the Suppression Law is compounded when coupled with the language of Section 5(4) which declares mere membership (presumably even for one day) in any organization which advocates, abets, advises, or teaches violent overthrow or alteration of government a felony punishable by up to $20,000 fine and 20 years imprisonment. Thus, participation in a legal defense group, for example, which is later found by Texas authorities to be "affiliated" with a subversive organization is

prima facie evidence of the commission of a criminal offense under Section 5. The creation of a presumption of guilt in the sensitive area of the political speech action spectrum which must be rebutted by a defendant in order to escape conviction is anathema. "[T]he free dissemination of ideas may be the loser." *Smith* v. *California*, 361 U. S. 147, 151 (1959); *Speiser* v. *Randall*, 357 U. S. 513 (1958).

CONCLUSION

The Texas Communist Control Law and Suppression of Communism Law are potent reminders of the mischief which can be done to First Amendment freedoms. "It would be blinking reality not to acknowledge that there are some among us ready to affix a Communist label upon those whose ideas they violently oppose." *Cramp*, *supra* at 286-287.

The condemnation of individuals by means of the simplistic label, under vague statutory language which ignores the most basic considerations of due process, serves no rational purpose. The First Amendment protects unpopular ideas and unpopular associations against suppression, and even discouragement. See *Bantam Books* v. *Sullivan*, 372 U. S. 58, 68-72 (1963). Indeed, the First Amendment is best served when it supports and encourages political associations free of government intrusion.

> "This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 462 (1958). See too *Gibson* v. *Florida*, 372 U. S. 539, 562-65 (1963).

This Court's decisions in *N.A.A.C.P.* v. *Alabama*, and others like it, including *Bates* v. *Little Rock*, 361 U. S. 516 (1960), *Shelton* v. *Tucker*, 364 U. S. 479 (1960), *N.A.A.C.P.* v. *Button*, 371 U. S. 415 (1963), and *Gibson* v. *Florida Legislative Committee*, 372 U. S. 539 (1963), are not strangers to the Texas officials. They trust, no doubt, that the absence of racial overtones in this case will save the statutes. But the Court must fix its vision on the central fact before it that the two statutes involved have led the State of Texas to believe it has the power to ransack a man's home, seize a mass of literature that is a part of the world's intellectual heritage, and threaten to use the literature as evidence in a criminal prosecution to convict petitioner of political heresy.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 40

JOHN W. STANFORD, JR.,
Petitioner

VS.

STATE OF TEXAS,
Respondent

ON WRIT OF CERTIORARI TO THE 57TH JUDICIAL DISTRICT COURT OF BEXAR COUNTY, TEXAS

SUPPLEMENTAL BRIEF FOR RESPONDENT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 40

JOHN W. STANFORD, JR.,

Petitioner

VS.

STATE OF TEXAS,

Respondent

MOTION

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT:

Petitioner filed his Reply Brief with this Court on the morning of argument, and a copy was received by this counsel on November 11, 1964, in Washington, D. C. Opportunity has not been afforded the State of Texas to answer some of the matters presented therein because of the limited time of receipt prior to argument. Respondent desires also to answer more completely some of the questions raised during argument which appeared to be of concern to some of the members of this Court.

Respondent, for the reasons above stated and with the hope of being of some assistance to this honorable Court, respectfully requests permission to file the attached supplemental brief.

SUPPLEMENTAL BRIEF

I. THE TEXAS SEDITION STATUTES ARE NOT SO VAGUE AS TO PROHIBIT RATIONAL APPLICATION

A. "The Communist Control Law"

The Texas Communist Control Law, Article 6889-3, Texas Civil Statutes, is principally a registration law requiring the registration of everyone in the State who is a Communist. Failure to register is punishable as a felony. This statute defines the word "Communist" in four separate definitions, briefly stated for convenience as follows:

> A "Communist" is a person (a) who "is a member of the Communist Party, notwithstanding the fact that he may not pay dues to, or hold a card in, said Party" (b) who "knowingly contributes funds or any character of property to the Communist Party"; or who "commits or advocates the commission of any act reasonably calculated to further the overthrow of the Government of the United States of America, the Government of the State of Texas, or the government of any political subdivision of either of them" (c) "by force or violence" or (d) "by unlawful or unconstitutional means."

1. Petitioner attacks definition (a) because it seeks to require the registration of nominal members of the Party, and imposes criminal sanction upon a failure to register and does not require a knowing and active membership as prescribed by the Court in *Dennis v. United States*, 341 U.S. 494 (1951). The simple answer to this contention of the Petitioner is that the United States statute as construed in *Dennis v. United States*, supra, does not specify a knowing and active mem-

bership, although the Court held that for such a statute to be constitutional, proof of these elements must be adduced. In any event, the Texas statute as worded meets the constitutional tests imposed by the Court and questions of constitutionality will be reached only during a trial where the charge is the failure to register and after the State of Texas has produced its evidence to show that the accused is a "Communist."

2. Under definition (b), the State of Texas would have to refer to the section of the law which defines the Communist Party as "any organization which is substantially directed, dominated or controlled by the Union of Soviet Socialist Republics or its satellites, or which in any manner advocates, or acts to further, the world Communist movement." It is conceded that there is a serious evidentiary question raised in proving the existence of other nations as satellites of the Union of Soviet Socialist Republics. Should the State of Texas be able to prove at a trial that the Texas Communist Party is directly dominated or controlled by the Union of Soviet Socialist Republics, that the accused knew of such domination and control and that to further the world communist movement and the cause of the Texas Communist Party, the accused knowingly was active therein or contributed money or property thereto, it would seem that this quantum of proof would satisfy the requirements as laid down by this Court in defining an active, knowing membership in the Communist Party. The problem in applying the definition does not seem to be a constitutional one of vagueness, but rather an evidentiary one.

3. Under definition (c), the language complained of by Petitioner as stated in his reply brief is "reason-

ably calculated to further the overthrow," the Petitioner contending that this language is too broad.

Initially, it should be observed that this definition is remarkably like the language in Section 2385, Title 18, U.S.C., which has been construed in great detail by this Court.

It is next noted that the commission or advocacy of the act "reasonably calculated to further the overthrow of the Government" by force or violence is almost identically the proof requirement imposed by *Yates v. United States*, 354 U.S. 298 (1951). The Court cites with approval the charge in *Dennis v. United States*, supra, the Court saying, at page 326, that the *Dennis* conviction "bottomed" on the charge, with the opinion setting out this charge as follows:

> "In further construction and interpretation of the statute (the Smith Act) I charge you that it is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and *advocacy of action* for the accomplishment of that purpose, by language *reasonably and ordinarily calculated to incite persons to such action*. . . ." (Emphasis supplied.)

It is urged that Texas statute merely recites an element of necessary proof before the conviction of a Communist can meet the tests of constitutionality as imposed by this Court. If the words "reasonably calculated" are understandable to a jury called upon to make a decision in a criminal case, the alleged vice of vagueness is defeated. See also *Wellman v. United States*, 253 F2d 601 (1958).

4. Petitioner complains that definition (d) is vague for the same reasons given in his attack on definition (c), and that the definition is aggravated by "substituting 'unlawful or unconstitutional means' for 'by force and violence.'"

Respondent submits that "unlawful or unconstitutional means" of necessity must be synonymous with the words "by force and violence" inasmuch as only an overthrow by force or violence can be punished constitutionally by either the United States or one of the several states. The crime alleged in *United States v. Foster, et al*, 9 F.R.D. 367 (1949), was conspiracy to organize the Communist Party in violation of Section 2385, Title 18, U.S.C. In this charge at page 391, Judge Medina in effect instructed the jury that what was prohibited under the act was "the teaching and advocacy of action for the accomplishment of that purpose [overthrowing, or destroying organized government by *unlawful means*], by language reasonably and ordinarily calculated to incite persons to such action." (Emphasis supplied.)

B. "Communist Party Suppression Law"

This act, Article 6889-3A, outlaws the Communist Party in Texas and punishes attempts at, or advocation of, the overthrow of the government of Texas by force or violence. Petitioner characterizes this law as modeled after the United States Communist Control Act of 1954, 50 U.S.C. Section 842. This is partially incorrect. Article 6889-3A forbids the same and similar acts as are forbidden by the Smith Act, 18 U.S.C., Section 2385, which prohibits advocacy of the overthrow of the United States by force or violence and organiza-

tion of and membership in any group which has such overthrow as its aim and purpose. It is Article 6889-3, the act discussed immediately above and denominated the Texas Communist Control Law, which requires registration of Communists that more nearly resembles the United States Communist Control Act of 1954.

In any event, Petitioner attacks the Suppression Law, which forbids advocacy or an attempt to overthrow the government by force or violence, by characterizing as vague, this language from Section 2 (outlawing the Communist Party):

> "all other organizations . . . which . . . advocate, abet, advise, or teach, or a purpose of which is to . . advocate, abet, advise, or teach any activities intended to . . . alter . . . the constitutional form of government [of the United States or Texas] by force or violence."

In the first place, this type of language was approved in *Dunn v. United States*, 138 F2d 137 (1943), cert. den. 320 U.S. 790, reh. den., 320 U.S. 815, the Court approving a Federal penal statute punishing advocacy of insubordination in the armed forces and saying that the words "advocate, abet, advise, or teach the duty, necessity, desirability or propriety" (of insubordination in the armed forces) are ordinary everyday terms with generally understood meanings.

While the language of Section 2 of Article 6889-3A has no constitutional vice, the language in any event has no application to the unlawful acts as defined in the statute and a recitation of the language of Section 2 only serves to confuse the true constitutional questions in the Suppression Act. The illegal acts are defined in Section 5 which has no reference to the cited

language and the unlawful acts defined therein are the almost identical acts denounced by 18 U.S.C. Section 2385. Petitioner does not in his brief attack Section 5 as being vague or indefinite. See this Court's discussion of vagueness as applied to Section 2385, Title 18, in *Dennis v. United States*, supra, at page 515 of the opinion.

II. THE TEXAS SEDITION STATUTES ARE CONSTITUTIONAL.

A. Preemption

The determination of the question of constitutionality of State statutes in the field of sedition is of extreme importance to the jurisprudence of the United States and to each of the several states. If these statutes are unconstitutional, the search warrant issued in this case is void and this Court must sustain petitioner's contention. The State of Texas, of course, does not agree with the position taken by petitioner.

Certainly this Court will grant the premise that a government is not forcibly overthrown by a single act. Water dripping on a stone eventually wears it away; can we say which drop caused the destruction? One drop alone causes no appreciable damage; it is the combined effect which achieves the result.

The opinion of this Court in *Dennis v. United States*, supra, at page 509, recognized this fact. It was pointed out that for acts to be a clear and present danger, it was not necessary for the government to wait for a putsch:

> "Certainly an attempt to overthrow the government by force, even though doomed from the outset because of inadequate numbers or power of

> the revolutionists, is a sufficient evil for Congress to prevent. The damage which such an attempt creates both physically and politically to a nation makes it impossible to measure the validity in terms of probability success . . ."

Acts and conduct designed to overthrow a government taken individually may have no appreciable effect. However, when they became part of an organized pattern, however insignificant of themselves, they became a present danger. The illegal pattern of the Communist Party as an organization advocating the overthrow of the government by force and violence, has been previously recognized by this Court in the cases of *The Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961), *Scales v. United States*, 367 U.S. 203 (1961), and others. In the case of *Gibson v. Florida Legislative Commission*, 372 U.S. 539 (1963), Mr. Justice Goldberg stated at page 547:

> ". . . the Communist Party is not an ordinary or legitimate political party, as known in this country, and that, because of its particular nature, membership therein is itself a permissible subject of regulation and legislative scrutiny."[1]

Historically, the physical protection of the individual within the community from crime and violence has been the duty of the State and the Community even to the extent that the assassin of a president would be punished under State rather than national law. On the other hand, the federal government has offered protec-

[1] Petitioner himself on page 26 of his brief, admits that the activities of the Communist Party are directed primarily against the federal government and again on page 29. Petitioner admits that the fortunes of the Communist Party are closely tied to a foreign nation which is antagonistic to the United States.

tion from invasion or insurrection and in the broad field of constitutional rights and liberties.

With this background in mind, let us examine the question of whether or not the State has a right to pass laws prohibiting acts which constitute an attempt to overthrow the government of a State or its political subdivisions in the course of which attempt the health, life and safety of its citizens will be placed in jeopardy, or, whether the federal government preempted the right of the State to act in this field.

Summarizing the result reached by this Court in the case of *Head v. New Mexico Board of Examiners*, 374 U.S. 424 (1963), we conclude that a court may find that congress has preempted the states in a field of legislation if the facts of each individual case show that congress has exercised its jurisdiction in a manner to exclude the State because either the subject requires national uniformity, or because there is a conflict in the two schemes of regulation. Likewise, a Court may find that preemption exists if there is evidence of the intent of Congress to occupy the field exclusively.

Is there any conflict in the historic duty of the State to protect the person and property of the individual and the obligation of the federal government to protect itself against the plot of any group to forcibly overthrow it? We can see none. This Court recognized in *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497 (1956), that Congress had preempted the state statutes in the field of sedition as it related to the national activities of any group or organization. In other words, attempts to overthrow the National government would consist of activities crossing many state lines and could

only logically be handled by the federal government under the same reasoning that vested control of interstate commerce in Congress rather than in the legislatures of the respective states. Even in the field of interstate commerce, the traditional concept of the police power of the State has been recognized. In the case of *Head v. New Mexico Board of Examiners*, supra, this Court quoted at page 428 from an earlier case of *Huron Portland Cement Company v. City of Detroit*, 362 U.S. 440 (1960), stating that:

> "... Congress ... never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though legislation might indirectly affect the commerce of the country."

If the Communist Party ultimately plans to overthrow the government of the United States by force and violence, in what way can laws of the State which attempt to regulate communists be upheld against the charge that Congress had preempted this field and that all State laws on the subject are invalid? Let us go back to the initial premise that a single act taken alone does not cause a government to fall but it must be one of many. Although this theoretical act may be part of an overall scheme, the State has the duty, the obligation and the right to protect the individual from direct consequences of acts of violence. To illustrate: A Communist instructs or incites a group to riot, to destroy public or private property, to injure other individuals and to create and encourage a disregard for law and for local government. In any such riot or mob action there is a *temporary* overthrow of local government, at least to a limited degree. The teaching of the local

group how to incite others to riot or directly inciting riot, causes an immediate danger to the person or property of the individual located in that particular city, which the State must enact laws to protect. To deny the State this right is to deprive them of one of the very basic reasons for their continued existence. To say that Congress meant to assume this burden in its entirety cannot be supported. To protect against the individual attempting violent overthrow, a vast number of new laws would have to be enacted by Congress. In Austin, Texas, for example there are over 250 policemen plus 15 to 20 deputy sheriffs to afford police protection to the individual. At present, there are only four FBI agents in this city. Certainly, a plot to overthrow the government of the City of Austin, even if part of a larger plot to ultimately overthrow the government of all principal cities and of the United States, would have to be suppressed by local law enforcement officers, unless Congress increased the FBI to fifty times its present strength, or, stationed Army units in every city.

Would not also the State have the right by enforcing sedition laws to protect itself against a plot to overthrow our state institutions by intimidating legislators or placing them in fear of their life or assassinating public officials? Recently the Attorney General of Texas received a copy of a letter, the original of which was sent to the Governor of the State of Virginia. In this letter the writer (purporting to be the president of an organization) stated that unless the State of Virginia disregarded the decisions of the United States Supreme Court and effected laws which would protect the individual against the acts of this Court, that it

would probably again be necessary for the people to take up arms in protection of their liberties. We forwarded the letter to the FBI for certainly it was designed as an attempt to create disrespect for this Court as an essential part of our federal government. It was also used to threaten and intimidate the legislators of the State of Virginia by requiring the State of Virginia to either defy the authority of the federal government or suffer the possibility of an attempt to overthrow its government.

We believe that this Court has clearly recognized that Congress did not intend to preempt all legislation in the field of sedition to the exclusion of the states in areas affecting the overthrow of the state government. In the case of *Uphaus v. Wyman*, 360 U.S. 72 (1959), and in *Gibson v. Florida Board of Control*, supra, this Court recognized that membership itself in the Communist Party was a permissible subject to regulation and legislative scrutiny. In the *Uphaus* case, this Court said at page 76.

> "... a state could proceed with prosecutions for sedition against the state itself ... the state had full power to deal with internal civil disturbances. Thus registration statutes, quo warranto proceedings as to subversive corporations, the subversive instigation of riots, and a host of other subjects directly affecting state security, furnish grist for the state's legislative mill."

B. Sedition Statutes do not Violate First Amendment

Petitioner has also contended that the Texas sedition statutes violate the First Amendment to our United States Constitution. We likewise think that this argument is without merit. In the case of *Roth v. U.S.*, 354

U.S. 476 (1957), this Court held that libel, blasphemy, profanity, and obscenity are not protected by the First and Fourteenth Amendments. In fact the First Amendment was not intended to protect every utterance. In the case of *Beuharnais v. Illinois*, 343 U.S. 250 (1952), this Court held that libel was not protected. In the case of *Gibson v. Florida Legislative Council*, supra, this Court, speaking through Justice Goldberg, stated that the government interest in controlling subversives and the particular character of the Communist Party and its objectives, outweigh the right of the individual Communist to conceal party membership. Again, in the case of *American Communications Association v. Douds*, 339 U.S. 382 (1950), it was held that an oath required to be signed by union leaders was not an abridgement of freedom of speech, but was aimed at particular acts or conduct. The Court continued that the important question was not whether, but how far, the First Amendment permits suppression of speech which also advocates conduct inimical to public welfare. There is no constitutional inhibition to regulate conduct. The Court cited as examples, regulation against a blaring sound truck, unauthorized parades, acts affecting health, morals, character or members of a bar association, are all subject to regulations. The Court quoted Chief Justice Hughes in the case of *Cox v. New Hampshire*, 312 U.S. 569 (1941), wherein it was stated at page 574:

> "Civil liberties as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

The Court then said that a non-communist oath or registration is designed to protect the public not against

what Communists advocated or believed, but against what Congress has concluded that they have done and are likely to do again. The necessity for a law in a particular field is a function of Congress, and a Court cannot substitute its judgment for that of Congress as to the necessity for regulation.

III. THE SEARCH WARRANT WAS LEGALLY ISSUED AND SOUND

A. Probable Cause

1. *Sources of Information.* From information received from confidential informants known to be reliable, the State of Texas learned that Petitioner herein, John W. Stanford, Jr., was an official in the Communist Party of Texas, that he distributed literature espousing the Communist line, that the literature and books were used by him as instruments to advocate the then Communist line, and to forward the aims and purposes of the Communist Party (R. 56, 58, 61). From these confidential sources, it was learned that Stanford was engaged in promoting the Communist Party line whose ultimate purpose was the overthrow of the government of Texas by force and violence, that Stanford knew of the violent purpose of the Party and he was an active member thereof.

2. *Use as an "Instrumentality."* It was reported that identical literature of the kind seized under the search warrant was distributed by Stanford and represented by him that certain parts of publications and material reflected the Communist Party thinking. It was further represented that the literature was being used to prepare the minds of the citizenry so that when

the time came for violence and active overthrow, the populace would be sympathetic to these aims or else so conditioned by this literature that they would be apathetic to a Communist takeover. These pieces of literature then were tools, instrumentalities or instruments of crime because they were being used as a part of a plan designed to assist the ultimate violent overthrow of the government. Unlike pornography the books and material were not of themselves contraband. They are "instrumentalities" in the manner used, even though other copies in other hands would not be subject to seizure. Whether or not they would ever, in the manner used, accomplish the intended purpose is not in itself important. *Dennis v. U. S.*, supra.

In *Scales v. United States*, supra, this Court held that the introduction into evidence of two tracts, "Black Belt," maintaining that the Negro population in the South has the right to form a new nation, and "I Saw the Truth in Korea," detailing alleged gruesome American atrocities in Korea, were properly admissible in evidence. With regard to the pamphlet "Black Belt" this Court said at page 256 that "the preaching that the Negro population in the South has the right to form a separate nation does not of itself constitute illegal advocacy. But neither does the teaching of the abstract theory of Marxism-Leninism . . ." The Court further said that "I Saw the Truth in Korea" "may not in itself constitute such an incitement to violence as would justify a finding that the Party advocated violent overthrow, but it is possible to infer from it that it was the purpose of the Party to undermine the government in the eyes of the people . . . as a preparatory measure, albeit legal in itself, to the teaching

and sympathetic reception of illegal advocacy to violent revolution."

The above named pamphlets were a part of the tools and instruments used in perpetrating the crime of advocating or committing the overthrow of the government by force or violence. If these pamphlets were properly evidentiary, they can only be instruments used in the commission of the crime charged—"illegal advocacy to violent revolt." While the possession, reading and teaching from the "Black Belt" and "I Saw the Truth in Korea" may be within the protection of the 1st Amendment, their use as a part of a plan to overthrow the government by force and violence is not so protected. It is the manner of their use, not necessarily their content, that takes the pamphlets from without the protection of the Constitution and makes them evidence of the crime of "illegal advocacy to violent revolt" as instrumentalities used in its perpetration. Should an opinion of this Court which might be unpopular with some groups be reprinted and used as a tool to incite that group to riot, the copies so used would be subject to seizure under the laws of the United States and under the laws of Texas, but the Opinion itself, certainly would not be suppressed.

3. *Sufficiency of Description of Items Seized.* It is interesting to note that the boundaries of search and seizure are broader under the Federal laws then they are under the laws of Texas. Rule 41 of the Federal Rules of Criminal Procedure, authorizing searches and seizures provides in part as follows:

> "(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a judge of the United States or of a state, common-

wealth or territorial court of record or by a United States commissioner within the district wherein the property sought is located.

"(b) Grounds for Issuance. A warrant may be issued under this rule to search for and seize any property

"(1) Stolen or embezzled in violation of the laws of the United States; or

"(2) Designed or intended for use or which is or has been used as the means of committing a criminal offense; or

"(3) Possessed, controlled, or designed or intended for use or which is or has been used in violation of Title 18, § 957."

This rule provides that property "*intended for use* or property which is *used* as a means of committing a criminal offensive is seizable, and Subsection 3 of Section (b) of the Rule permits the seizure of property intended for use in violation of Section 957 of Title 18, U.S.C. which provides as follows:

"Whoever, in aid of any foreign government, knowingly and willfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than $1,000 or imprisoned not more than ten years, or both."

The above cited criminal law specifically provides that *papers* used in violating any penal statute in aid of a foreign government is a crime, and such papers may be searched for and seized pursuant to Rule 41.

4. *Constitutionality of Section 9.* Section 9 of Article 6889-3A must be read in connection with Title

6 of the Texas Code of Criminal Procedure to which reference is therein made. These statutes taken together reflect that only such evidence that may be an "instrumentality of crime" can be seized.

Although petitioner has picked out one or two isolated items which were lost amid the general contents of the file cabinet seized and were certainly not "instrumentalities" or even evidence of crime, this should not invalidate the use of the myriad of documents that actually were "instrumentalities."

It is submitted that if the State's theory is correct, and if Petitioner is later indicted and tried, the books and pamphlets seized from the home would be properly admissible in evidence as instrumentalities used by Stanford to persuade the members of the Texas community toward an acceptance of the Communist Party doctrines and philosophies so that the population would either be active in accomplishing violent takeover, or be sympathetic to those so engaged. The admissibility of this evidence would depend on first establishing the manner of their use by competent witnesses at the time it was offered at a trial.

CONCLUSION

The State of Texas submits that the Texas Communist Statutes are constitutional. They are neither so vague nor so broad as to prohibit rational administration of their penal provisions, nor has the subject matter, as covered in the Texas statutes, been preempted by Federal legislation.

In issuing the search warrant in this case, the State of Texas acted to seize instrumentalities used in com-

mitting crimes as defined by the Texas Communist Statutes, a valid, constitutional exercise of its sovereign powers to inhibit and control activities dangerous to the orderly, governmental functions of a democratic state.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant Attorney General

LONNY ZWEINER
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief for Respondent were served upon Maury Maverick, Jr., Maverick Building, San Antonio 5, Texas, John J. McAvoy, 14 Wall Street, New York 5, New York, and Melvin L. Wulf, 156 Fifth Avenue, New York 10, New York, Attorneys for Petitioner, by depositing same in the United States mail, properly addressed, postage paid, certified mail, on this the _____ day of _____, 1964.

HAWTHORNE PHILLIPS
Of Counsel

Office Supreme Court, U.S.
FILED
FEB 12 1965
JOHN F. DAVIS, CLERK

IN THE

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October Term, 1964

No. 40

JOHN W. STANFORD, JR., *Petitioner*

vs.

STATE OF TEXAS, *Respondent*

On Writ of Certiorari to the 57th Judicial District Court of Bexar County, Texas

PETITION FOR REHEARING

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT:

Pursuant to Rule 58 of the Revised Rules of the Supreme Court of the United States, Respondent files this, its Motion for Rehearing. Respondent says that this Motion is based on substantial grounds which have not been fully presented to the Court and that Respondent's position in this Motion is that the Court in its Opinion filed on January 18, 1965, erroneously interpreted the action of Texas in making the search and seizure herein as suppression of books and ideas within the protection of the First Amendment and the Fourth Amendment to the Constitution of the United States.

The First Amendment Does Not Control the Search and Seizure in this Case

The opinion is grounded on the premise that the description of the articles seized in this case was too general to accord with the constitutional requirement of the Fourth Amendment to the Constitution of the United States forbidding unreasonable searches and seizures. This judgment by the Court rests in turn on equating the Fourth Amendment with the First which guarantees the right to a free expression of ideas, the opinion at Page 9 reciting:

> "In short, what this history indispensably teaches is that the constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain. See *Marcus v. Search Warrant*, 367 U.S. 717; *A Quantity of Books v. Kansas*, 378 U.S. 205. No less a standard could be faithful to First Amendment freedoms. . . ."

Respondent, the State of Texas, respectfully points out that the books seized here are not seized because of ideas expressed therein. Stanford is not to be prosecuted for possession of the books or for advocating the thoughts presented. His crime against Texas, if any, is the advocacy of and the attempt at overthrowing the government of Texas by force and violence. The books and literature are one of the means used to accomplish the overthrow. Texas confesses that the books, as such, are within the protection of the First Amendment, but insists that, even so, they can be the implements used in committing the crime of illegal overthrow; as instrumentalities of crime they are subject to seizure and

would be material and probative evidence of the overthrow. In the context of the facts and circumstances of this case, Respondent urges the First Amendment has nothing to do with the seizure.

Texas does not seek to suppress the books as was the case in *Marcus v. Search Warrant*, 367 U.S. 717. It seeks only to obtain tools used in the suspected illegal overthrow of its government by Stanford, and their use as evidence would be to depict the manner, means and instrumentality by which Stanford sought to overthrow the government by force and violence. There is no desire or attempt to suppress or destroy all copies of the books seized, restrict their publication or the dissemination of any idea expressed therein, but only to show the manner and means by which certain ideas taken from particular publications were used to further the overthrow of the State government by the Communist Party.

The Search Warrant Issued Did Not Violate the Protection Afforded by the Fourth Amendment

The search warrant issued in the instant case described the premises in detail and alleged that the premise was a place where "books, records, pamphlets, cards . . . are *unlawfully* possessed and "*used*" (italic ours) and the officers were ordered to enter and take possession of this material.

We present that the material in the nature of books and pamphlets, *unlawfully* used in violation of Articles 6889-3 and 6889-3a, R. C. S. of Texas were the instrumentalies of crime ordered to be seized and were just as subject to seizure as gambling paraphernalia, narcotics or cases of whiskey. *Steele v. United States No. 1*,

267 U.S. 498, 504. They were being seized *not for the ideas or expressions themselves*, as contained the books, but *solely because of the manner in which the books were used.*

It is admittedly more obscure and difficult to explain in a manner which can be readily apparent how a book can be an instrumentality of crime when used as a text along with others to teach segments of an idea or proposition, the final result of which is to actively participate in the overthrow of the government by force and violence whenever the opportunity presents itself, than it would be to explain how Madison's notes on the Constitution were used for murder by beating another over the head with it would in itself be an instrumentality of crime. We feel, however, that the *manner* in which the book is used, irrespective of its contents, is the determining factor. It is this determining factor that permitted the seizure of the ledger, although not described in the warrant, in the case of *Marron v. United States*, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231, and related cases.

In its opinion herein, this Court has cited the cases of *Wilkes v. Wood*, 19 Hon.St.Tr. 1153, and *Entick v. Carrington*, 19 Hon.St.Tr. 1029, which we respectfully submit were not in point as applied to the facts of this case as there has been no attempt to suppress the books and pamphlets seized from the Petitioner herein or any like them, or to suppress their free dissemination by others not attempting to use them for an unlawful purpose—only to use them to show the manner in which the Petitioner was attempting to use them to further the conspiracy to overthrow the government of the State of Texas by force and violence. We further

contend that a *particular* copy of the Bible, the Constitution of the United States, any of the Opinions of this Court, or of any book or pamphlet, when used as a part of a course to teach the overthrow of the government by force and violence would properly be received in evidence as an instrumentality or vehicle by which an unlawful end was being accomplished.

This case is quite different from *Marcus v. Search Warrant*, 367 U.S. 717, and *A Quantity of Books v. Kansas*, 378 U.S. 205. The *contents* of the books are not an issue. There is no contention that the articles seized are contraband or that any of the ideas contained therein standing alone are illegal. We contend, however, that if probable cause existed to make this search because the "books, records, pamphlets and cards . . . are unlawfully . . . used," they were properly seized and the State is entitled to show how they were used in a trial before a court and jury. There should really be no greater requirement in describing "instrumentalities consisting of books, records and pamphlets" which were unlawfully used than in describing "paraphernalia used in administering narcotics."

CONCLUSION

The undersigned, representing the State of Texas, respectfully pray that this honorable Court reconsider the Opinion heretofore rendered and deny the relief sought by the Petitioner, John W. Stanford, Jr.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

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JAMES E. BARLOW
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San Antonio, Texas

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CERTIFICATE OF COUNSEL

The undersigned represents that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds above specified.

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Of Counsel

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